

**OFFICIAL REPORT OF PROCEEDINGS
BEFORE THE
NATIONAL LABOR RELATIONS BOARD**

In the Matter of:

Case No.: 22-RC-288780

STARBUCKS CORPORATION

Employer

And

WORKERS UNITED

Petitioner

Place: Via Teleconference

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OFFICIAL REPORTERS

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STARBUCKS CORPORATION, :
Employer, :
And :
WORKERS UNITED, :
Petitioner. :

-----:

The above-entitled matter came on for hearing
Pursuant to Notice, before HENRY J. POWELL, Hearing Officer, at
the National Labor Relations Board, Region 22, via Zoom, on
Wednesday, February 2, 2022, at 10:00 a.m.

A P P E A R A N C E S

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I N D E X

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS	VOIR DIRE
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SCOTT THIBEDEAU	19	75	97	103	
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ABBY TURNER	108	151	178	179	
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P R O C E E D I N G S

(Time Noted: 10:33 a.m.)

HEARING OFFICER POWELL: On the record. This hearing will be in order. This is a formal hearing in the matter of Starbucks Corporation, Case No. 22-RC-288780, before the National Labor Relations Board.

The Hearing Officer appearing before the National Labor Relations Board is Henry J. Powell. All parties have been informed of the procedures at formal hearing before the Board, by service and statement of standard procedures with the notice of hearing. I have additional copies for distribution if anyone wants more.

Will counsel please state their appearances for the record? For the petitioner?

MR. GAUDIOSO: Yes, David A. Gaudio, Meranze Katz & Gaudio on behalf of Workers United.

HEARING OFFICER POWELL: For the employer?

MS. MARKEY: Nina Markey, Littler on behalf of the employer, Starbucks.

HEARING OFFICER POWELL: All right. Ms. Markey, is anyone else going to make an appearance on the record --

MS. MARKEY: Yes.

HEARING OFFICER POWELL: -- on behalf of the employer?

MS. MARKEY: I have Marie Duarte with me today. She's the other one who will be appearing and taking witnesses. Brian

1 Hentaz (ph) is behind the scene and will be e-mailing you the
2 exhibits but will not be on the record today.

3 HEARING OFFICER POWELL: Okay.

4 MS. MARKEY: Both have their appearances entered in the
5 matter.

6 HEARING OFFICER POWELL: Okay. Thank you. For the
7 intervenor?

8 There is no intervenor. Are there any other appearances?

9 (No response)

10 HEARING OFFICER POWELL: Let the record show no further
11 responses.

12 I now propose to receive the formal papers. The formal
13 papers have been marked for identification and shown to the
14 parties. They're Exhibits 1(a) through 1(j) inclusive, with
15 1(j) being an index and description of the entire exhibit. The
16 exhibit has already been shown to the parties. Are there any
17 objections to the receipt of these exhibits into the record?

18 MR. GAUDIOSO: No objection.

19 HEARING OFFICER POWELL: Okay. Hearing no objection, the
20 formal papers are received into evidence.

21 (Board's Exhibit Nos. 1(a) through 1(j) received)

22 HEARING OFFICER POWELL: I've also sent to the parties a
23 series of exhibits, Board Exhibits 2 through 6. They've been
24 shown to the parties. There's been an explanation. These
25 include documents relating to the present COVID situation.

1 I now propose to receive those documents as well. Is
2 there any objection?

3 MS. MARKEY: No objection.

4 MR. GAUDIOSO: No objection.

5 HEARING OFFICER POWELL: Hearing no objection, those
6 documents are also now received.

7 (Board's Exhibit Nos. 2 through 6 received)

8 HEARING OFFICER POWELL: The parties in this proceeding
9 have executed and I've approved documents that's been marked as
10 Board Exhibit No. 7. That exhibit contains a series of
11 stipulations, including among other items that the petitioner
12 is a labor organization within the meaning of the Act, that
13 there's no contract bar, and that the employer meets the
14 jurisdictional standards of the Board.

15 Are there any other objections to the receipt of Board
16 Exhibit No. 7?

17 MR. GAUDIOSO: No objection.

18 MS. MARKEY: No objection.

19 HEARING OFFICER POWELL: All right. With that and hearing
20 no objection, Board Exhibit No. 7 is received into evidence.

21 (Board's Exhibit No. 7 received)

22 HEARING OFFICER POWELL: Amongst those stipulations are
23 that the parties if an election -- agreed that if an election
24 is so ordered, that that election will be conducted by mail,
25 along with a series of stipulations relating to the

1 introduction of documents related to this case.

2 All right. Are there any pre-hearing motions at this
3 point that anyone would like to make, that need to be
4 addressed?

5 MS. MARKEY: Not from the employer.

6 HEARING OFFICER POWELL: Okay. Now, Ms. Markey, could you
7 please state the correct and complete name of the employer?

8 MS. MARKEY: Starbucks Corporation.

9 HEARING OFFICER POWELL: And, Mr. Gaudio, could you
10 please state the complete and correct name of the petitioner.

11 MR. GAUDIOSO: Workers United.

12 HEARING OFFICER POWELL: Okay. Now, in a prehearing
13 conference amongst the parties it was determined that the
14 single issue that will be presented today is the issue of
15 whether the -- an election should be conducted at a single
16 store location, the 800 Denow Road, Pennington, New Jersey
17 location, as a standalone election or it should be conducted
18 amongst the stores that consist of District 761 of the
19 employer's 761st district. And those include 12 stores is my
20 understanding. That is the one and only issue that we'll be
21 discussing today.

22 The parties have stipulated and agreed that the other
23 issue in this matter, that of the status of the assistant store
24 manager will be voted subject to challenge and would be
25 dispersed so we are not hearing -- we're not taking evidence on

1 that issue at this moment.

2 So in that regard, Ms. Markey, it's your contention that
3 the position the unit proposed unit -- I'm sorry, that the
4 proposed unit is -- should be the entire 761st district which
5 consists of 12 stores; is that correct?

6 MS. MARKEY: That is correct. It should be District 761,
7 which as you noted is 12 stores.

8 HEARING OFFICER POWELL: Okay. As the party asserting
9 that, it is your burden to meet the requirements to show that
10 that is the appropriate unit. In that regard, you are burdened
11 with the burden of proof and you are going first.

12 MS. MARKEY: Do you want brief opening statements before
13 that?

14 HEARING OFFICER POWELL: Mr. Gaudioso, are you -- would
15 you like to do a brief opening statement? Mr. Gaudioso?

16 MS. MARKEY: I think we still have him.

17 HEARING OFFICER POWELL: Okay. All right. Well, Ms.
18 Markey, if you'd like to do a brief opening statement, please
19 go ahead.

20 MS. MARKEY: In January, Workers United filed a petition
21 to represent Starbucks' baristas, shift supervisors and
22 assistant store managers in the Starbucks store located at 800
23 Denow Road in Pennington, commonly referred to as the Hopewell
24 Store.

25 I'll stop because I see Mr. Gaudioso putting his hand up.

1 I can hear you fine, Mr. Powell, can you hear me okay?

2 HEARING OFFICER POWELL: Yes, I can hear you fine. Mr.
3 Gaudioso, can you hear?

4 (No response)

5 HEARING OFFICER POWELL: All right. Go off the record for
6 a second, please.

7 (Paused at 10:40 a.m.; reconvened at 10:41 a.m.)

8 HEARING OFFICER POWELL: All right. Ms. Markey, you may
9 continue.

10 MS. MARKEY: The Hopewell Store is part of District 761,
11 which is comprised of 12 stores in the central New Jersey area.

12 We're here today to determine whether the partners in
13 District 761 will be permitted to vote together as a district
14 on the issue of representation by Workers United.

15 Before this hearing, regarding the petition filed for
16 Hopewell, Workers United previously filed petitions and
17 hearings were conducted in Buffalo, New York, Mesa, Arizona,
18 Seattle, Washington, Boston, Massachusetts and Knoxville,
19 Tennessee.

20 The pre-election hearing from those matters similarly
21 involved whether the single petitioned for stores were the
22 appropriate unit. The parties and Region have agreed to enter
23 the records from these prior proceedings in this matter.

24 MR. GAUDIOSO: Sorry.

25 HEARING OFFICER POWELL: Ms. -- can we go off the record

1 again, I'm sorry to interrupt.

2 (Paused at 10:42 a.m.; reconvened at 11:31 a.m.)

3 THE REPORTER: On the record.

4 HEARING OFFICER POWELL: All right. Due to some technical
5 difficulties, there was an extended break during Ms. Markey's
6 opening statement. In that regard, I'm going to allow her to
7 restart her opening statement. Also, there is no sequestration
8 order, I'd like to note for the record, there's no
9 sequestration order in this matter. The parties have agreed to
10 allow persons to be in the hearing. All right. Ms. Markey.

11 MS. MARKEY: Thank you, Mr. Powell.

12 In January Workers United filed petitions to represent
13 Starbucks barristas, shift supervisors and assistant store
14 managers in the Starbucks Store located at 800 Denow Road in
15 Pennington, commonly referred to as the Hopewell Store.

16 The Hopewell Store is part of District 761, which is
17 comprised of 12 stores in the central New Jersey area. We're
18 here today to determine whether the partners in District 761
19 will be permitted to vote together as a district on the issue
20 of representation by Workers United.

21 If the Region denies Starbucks' request to have all
22 district partners participate in the election, the Hopewell
23 Store could have very different terms and conditions of
24 employment than all the other District 761 stores.

25 Before this hearing regarding the petition filed for

1 Hopewell, Workers United previously filed petitions and
2 hearings were conducted in Buffalo, New York, Mesa, Arizona,
3 Seattle, Washington, Boston, Massachusetts and Knoxville,
4 Tennessee.

5 These pre-election hearings in those matters similarly
6 involve whether the single petitioned for stores were the
7 appropriate unit. The parties and Region have agreed to enter
8 the records from these prior proceedings in this matter.

9 Starbucks intentionally operates in a way that ensures
10 that a customer can walk into any of its more than 8,000 stores
11 and enjoy the same beverage and food items nationwide.

12 Starbucks will present evidence that because of the functional
13 integration in District 761, the only appropriate unit is a
14 unit that consists of partners from the 12 stores located in
15 the district.

16 Starbucks utilizes various tools and operations and
17 policies to exert day-to-day control over the operations and
18 labor relations in its stores. These tools carry out the
19 control for consistency purposes, while at the same time
20 minimizing store level variation in how the stores operate and
21 how the partners work.

22 The district stores are supported by the same HR or in
23 Starbucks parlance, partner relations and labor relations
24 resources and the company's partner resource functions are
25 centralized throughout the country.

1 Starbucks detailed and centralized operational protocols
2 highlight the functional integration of the district,
3 eliminates operational distinctions between stores within the
4 district and facilitates regular and frequent interchange of
5 employees.

6 The wages, benefits, policies and procedures, as well as
7 decisions about store design, equipment placement, marketing
8 promotions, store budgets, hours of operation, and contracts
9 with vendors all are made at the district level and above.

10 Similarly, all partners in District 761 perform the same
11 job duties in the same manner, have the same job descriptions,
12 uniforms, pay ranges and benefits, training, skills and working
13 conditions, policies and procedures, and same partner resources
14 support.

15 Starbucks' partners presently enjoy the flexibility of
16 being able to work in any store. Many partners in District 761
17 have worked at two or more stores within the district,
18 exemplifying why those partners beyond the petitioned store
19 deserve to have their voices heard and their votes counted.

20 Starbucks will also present documentary evidence as well
21 as testimony about the high level of partner interchange across
22 the district. In addition to this, Starbucks will present an
23 expert witness who will provide a statistical analysis of the
24 mathematical inferences that can be reached based on the data
25 of partner interchange at the petitioned for stores, and at

1 other stores in the same district, further demonstrating the
2 high degree of partner interchange.

3 For these reasons, stores in District 761 are heavily
4 integrated and a multi-location unit is the only appropriate
5 unit.

6 HEARING OFFICER POWELL: Thank you. Mr. Gaudio, do you
7 wish to make an opening statement?

8 MR. GAUDIOSO: Sure. Mr. Hearing Officer, the Union's
9 position is simple. It's that a single store unit is
10 presumptively an appropriate unit, and that's not just the
11 Union's presumption, that's the Board's presumption.

12 It's the Board's presumption through countless prior
13 hearings, not just in this matter, a handful, and there's
14 certainly more to come, but it has been the -- enshrined in
15 many decisions over many decades. It's the presumption of the
16 Act itself, as set forth in Section 9(b) and as I stated, it's
17 been the presumption in the prior cases regarding this very
18 issue with this employer that have already been decided in
19 Buffalo 1 and Buffalo 2 and Mesa case, and it certainly will be
20 argued in many other cases presently filed, and which will be
21 filed in the future.

22 To overcome this presumption, case law says that there is
23 a heavy burden and quite frankly, that is a burden that
24 heretofore Starbucks has not been able to meet, nor will it be
25 able to meet in this case.

1 Now, I find it somewhat ironic that from Ms. Markey's
2 description you get a sense that there's a certain consistency
3 with regards to how Starbucks operates across the country. And
4 that certainly may be so. The irony is, what you're going to
5 be asked to find, is an inconsistency, that you're going to be
6 asked to find something different than prior regions have found
7 with regard to these very same topics.

8 It's also rather ironic when you look over the S&P that
9 Starbucks submitted in this matter, it reads very much like the
10 SOPs that you have in any number of other cases, for which you
11 have taken administrative notice. That is certainly, and I
12 mean this sincerely, that is not a knock on Starbucks' counsel,
13 because quite frankly if you look at my RSOP it's exactly the
14 same as the RSOP that's been filed in all the other cases as
15 well. There's nothing new under the sun here.

16 And all's we have is an attempt to make an argument that
17 in some way, shape or form, the Hopewell store is a unicorn.
18 It's something unique, it's something different or a place that
19 has consistency or wants you to think that there's consistency,
20 what is not consistent is their argument.

21 Frankly, when you look at the issues that are important to
22 you, the Board, in determining whether or not there's an
23 appropriate unit, more specifically whether the presumption of
24 an appropriate unit, a single store being an appropriate unit
25 has been met, the things that you look at really aren't whether

1 or not you have consistency of design or things such as the
2 opening and closing of stores, things that we've seen argued in
3 all of these other cases. What you look for are issues with
4 regard to hiring, issues with regard to discipline, issue with
5 regard to promotions and training, issues with regard to
6 permanent transfers, scheduling, time tracking, payroll and
7 staffing, approval of time off, evaluations, resolution of
8 employee complaints and grievances.

9 The testimony that's been adduced in all of the cases, in
10 which you are taking administrative notice have all been
11 consistent and you will find that same consistency in this
12 case, that in all of these instances, for all of those topics,
13 those topics are answered in the store itself, in Hopewell,
14 it's not a district issue, it's a store issue and those are
15 issues that are resolved in the first instance at the store
16 manager level.

17 No different than what you've seen in Buffalo 1, Buffalo
18 2, Mesa, no different than what will be argued ad infinitum
19 until there is a decision of the Board, essentially stopping
20 this cumulative type of evidence on the same topics, which
21 undoubtedly will result with the same outcome.

22 So our position again is very simple. We have
23 presumptively petitioned for an appropriate unit. Case law
24 says that your precedent has said that, the Act itself has said
25 that, it will be no different outcome that should be adduced

1 when you look at interchange, you're going to find that the
2 interchange of employees is voluntary, it's not something that
3 is ultimately in practice required. That in practice, that
4 accounts were actually a very small amount of the amount of
5 partner time in the Hopewell store.

6 That the inferences that Starbucks would like you to take
7 in this case are no different than the inferences that they
8 have asked you to take in prior cases that in those cases, the
9 regional director has said no, where the acting regional
10 director has said no, we're not going to follow those
11 inferences, we don't need those inferences. Those inferences
12 are not accurate with regard to what is actually happening in
13 those stores. You're going to find that again in this matter.

14 So simply stated, we have petitioned for an appropriate
15 unit, we should follow that consistent stream of decisions that
16 have so far come to pass in the DDE's, and you should allow
17 this petition to go forward and order an election for the
18 Hopewell store, solely for the Hopewell store. Thank you.

19 HEARING OFFICER POWELL: All right. As noted earlier, Ms.
20 Markey who is the moving party who will be asserting the
21 district-wide unit, the burden is on the employer to provide
22 the evidence to meet that burden.

23 In this regard, if you will please call your first
24 witness.

25 MS. MARKEY: The employer calls Scott Thibedeau.

1 HEARING OFFICER POWELL: Okay. Mr. Thibedeau.

2 MR. THIBEDEAU: Good morning.

3 HEARING OFFICER POWELL: Good morning. Could you raise
4 your right hand please?

5 SCOTT THIBEDEAU, EMPLOYER'S WITNESS, SWORN

6 HEARING OFFICER POWELL: Okay. Mr. Thibedeau, there are
7 just a few preliminary questions. Are you in the room by
8 yourself right now?

9 THE WITNESS: I am.

10 HEARING OFFICER POWELL: All right. Where exactly are
11 you?

12 THE WITNESS: I'm in an office room.

13 HEARING OFFICER POWELL: All right. Is it at the company
14 or at a lawyer's office or where exactly are you located?

15 THE WITNESS: It's at the lawyer's office.

16 HEARING OFFICER POWELL: All right. Is the door closed?

17 THE WITNESS: It is, yes.

18 HEARING OFFICER POWELL: Okay. And you're the only person
19 there.

20 THE WITNESS: I am.

21 HEARING OFFICER POWELL: Okay. Do you have any papers or
22 anything that you're going to refer to?

23 THE WITNESS: I do not.

24 HEARING OFFICER POWELL: Okay. All right. Ms. Markey.

25 MS. MARKEY: Thank you. Is it okay if I call you --

1 HEARING OFFICER POWELL: So -- I'm sorry, Ms. Markey. I
2 allowed this, Mr. Gaudio, do you have any voir dire of this
3 witness regarding where he's testifying?

4 MR. GAUDIOSO: No.

5 HEARING OFFICER POWELL: Okay. Ms. Markey.

6 MS. MARKEY: Thank you.

7 DIRECT EXAMINATION

8 BY MS. MARKEY:

9 Q Is it okay if I call you Scott?

10 A Yes.

11 Q Are you currently employed?

12 A Yes, I am.

13 Q By who?

14 A Starbucks Coffee Company.

15 Q How many years have you worked at Starbucks?

16 A About 12 years.

17 Q What is your current position?

18 A District manager.

19 Q How long have you held that position?

20 A About five years.

21 Q And where are you currently district manager, what
22 district?

23 A District 761.

24 Q How long have you been the district manager of District
25 761?

1 A About for five years.

2 Q What position did you hold immediately prior to the
3 district manager title?

4 A Store manager.

5 Q And where were you store manager?

6 A Throughout Ocean and Monmouth County, New Jersey.

7 Q Who do you currently report to?

8 A My regional director, Jen Pivarnik.

9 Q Can you describe your general responsibilities as district
10 manager for us?

11 A Sure. I'm responsible for the overall operations, day-to-
12 day operations, partner safety of the entire district.

13 Q Are you familiar with the petition for the store, the
14 Hopewell store?

15 A I am, yes.

16 Q And is that one of the stores in your district?

17 A It is, yes.

18 Q Who is the current store manager at that store?

19 A Misty Knight.

20 Q And how long has Misty been the store manager at that
21 store?

22 A Around three years.

23 Q How often do you interact with Misty?

24 A Weekly.

25 Q Can you explain for us what you do on a weekly basis that

1 causes you to interact with Misty?

2 A Sure. I mean, at minimum every Monday we have district
3 calls for all my store managers and I meet on Monday at 12
4 o'clock and we discuss any updates going on in the company, we
5 review results from the prior week, and then we look at the
6 week ahead what are the priorities.

7 Q And who attends those meetings?

8 A Myself and my store managers and my assistant store
9 managers.

10 Q And are those the store managers in the district?

11 A Correct, yes.

12 Q Any other store managers outside of the district that
13 attend that meeting?

14 A No.

15 Q How often do you visit the stores in District 761?

16 A Pretty much daily.

17 Q And what do you do when you visit the store?

18 A Check in with my store manager, check in with my partners,
19 make sure that the operation is running as it should. Making
20 sure anybody has any concerns, they can bring concerns forward
21 to me. And that's pretty much what I do on a daily basis.

22 Q How often do you visit the Hopewell store?

23 A It's going to depend. A minimum usually will be monthly.
24 I do have some assistant store managers there, so I do more
25 frequently visit the store in recent months.

1 Q Are you familiar with the Starbucks partner guide?

2 A I am, yes.

3 Q And I realize I'm not sure if you are on a computer that
4 you have access to the exhibits. I know that we have you on a
5 laptop and not your own computer.

6 A Sure.

7 Q So, Scott, do you currently have access to e-mail on that
8 computer?

9 A I do not.

10 Q Okay.

11 HEARING OFFICER POWELL: Ms. Markey, are you -- would you
12 like to show him an exhibit?

13 MS. MARKEY: Yes. I'm trying to figure out the easiest
14 way to do this so that all can see. I can share my screen --

15 HEARING OFFICER POWELL: Yeah.

16 MS. MARKEY: -- if that makes sense. I just want to make
17 sure you have it set up in a way to do that.

18 HEARING OFFICER POWELL: Yes, just share your screen and
19 Mr. Thibedeau if he's on should be able to see it.

20 MS. MARKEY: Yes.

21 HEARING OFFICER POWELL: And I'm sorry, before you
22 continue, Mr. Thibedeau, could you spell your last name for the
23 court reporter, please?

24 THE WITNESS: Sure. It's T-H-I-B-E-D-E-A-U.

25 HEARING OFFICER POWELL: All right. Thank you.

1 MS. MARKEY: Okay. I am pulling up what has been e-mailed
2 to the parties and the court reporter and, Mr. Powell, you
3 should have -- there were two e-mails that were sent. The
4 larger e-mail that has all of the exhibits with the exception
5 of 1, Starbucks Hopewell ER Exhibit 2, the partner guide and
6 I'm going to start to share that with the witness. But if, Mr.
7 Gaudio and Mr. Powell, if you could let me know whether you
8 want to pull it up separately or you're fine just screensharing
9 as well.

10 MR. GAUDIOSO: That's fine.

11 HEARING OFFICER POWELL: Yeah, screen sharing is better.

12 BY MS. MARKEY:

13 Q Great. Scott, can you see the partner guide currently?

14 A Yes.

15 MS. MARKEY: I want to make sure that -- and I apologize
16 because my view's a little bit different on this computer. I
17 want to make sure that that's the only thing you're seeing. So
18 let me make sure that I set it out of my e-mail so that I don't
19 have anything that I'm sharing. Give me just a moment.

20 HEARING OFFICER POWELL: All right. Ms. Markey, I will
21 tell you that is what is -- what is showing up has XBUX Hop,
22 just a series of those tabs across the top. I don't think
23 anyone can open them.

24 MS. MARKEY: Good. And you should be only seeing then the
25 partner guide on the screen.

1 HEARING OFFICER POWELL: Correct.

2 MS. MARKEY: Great.

3 BY MS. MARKEY:

4 Q Scott, can you tell us what the partner guide is?

5 A Sure. It's --

6 Q Just briefly.

7 A Yep. It's -- the guide is a summary of our benefits and
8 policies for the store partner. On the first day, they get
9 this document.

10 Q And does the partner -- who does the partner guide apply
11 to?

12 A All partners at Starbucks.

13 Q And just for --

14 HEARING OFFICER POWELL: Repeat that, I didn't hear that
15 quite clearly.

16 THE WITNESS: All partners at Starbucks.

17 HEARING OFFICER POWELL: Okay.

18 Q Do store managers within District 761 have the ability to
19 alter any of the provisions of the partner guide?

20 A No, they do not.

21 Q Do you have the ability to do so as the district manager?

22 A No, I do not.

23 Q Do you know who creates the partner guide?

24 A It would Starbucks corporate.

25 MS. MARKEY: We'd like to move for the admission of

1 Hopewell Exhibit Employer 2.

2 HEARING OFFICER POWELL: Any objection?

3 MR. GAUDIOSO: No objection.

4 HEARING OFFICER POWELL: So admitted.

5 (Employer's Exhibit No. 2 received)

6 BY MS. MARKEY:

7 Q And when you look to -- I'm scrolling through to the fifth
8 page of the document, Scott, do you know whether this -- look
9 inside in the table of contents is the same for all the
10 partners within your district?

11 A Yes, they're all the same.

12 Q Okay. Hopefully I've stopped sharing my screen.

13 A Yes.

14 Q When a partner in your district has a complaint about any
15 employment related issues, how are those handled in your
16 district?

17 A They will either bring it to the store manager, myself.
18 We also have partner resources or partner relations.

19 HEARING OFFICER POWELL: Ms. Markey, I'm sorry to keep
20 interrupting and I will tell the parties as the hearing officer
21 my job is to be aware, to make the record complete. I just
22 would like if you could explain, I hear you using the term
23 partner. Could you explain what that is? I'm assuming it's
24 the baristas and all the employees, but if you could just
25 explain that for the record.

1 THE WITNESS: Absolutely.

2 MS. MARKEY: Happy to do so.

3 BY MS. MARKEY:

4 Q Scott, if you could explain for us what does the term
5 partner mean?

6 A Sure. Partner -- everybody that works at Starbucks is
7 considered a partner, so every employee of the company is
8 considered a partner.

9 Q And is that to both for baristas as well as managers?

10 A Yes.

11 Q And similarly, can you explain for us what partner
12 relations is?

13 A They're the equivalent to human resources for Starbucks.

14 Q Do you have a specific partner relations person that you
15 work with in your district?

16 A I work with -- Tina McDonald is my partner resources
17 manager, yes.

18 Q And what kinds of things do you work with Ms. McDonald on?

19 A It would just be around guidance around corrective action
20 for partners.

21 Q Do store managers consult with you regarding corrective
22 action for their partners?

23 A They do, yes.

24 Q Can you give me an example of when that's happened?

25 A Sure. If a partner is consistently running late and they

1 might bring to the manager's attention around I'm late for a
2 family matter, something that might be a little bit grayer,
3 we'll have a conversation. We'll use our -- a lot of times,
4 we'll lean on our -- we have a digital, our virtual coach that
5 we can go through to kind of work through the scenario to kind
6 of come up with the best guidance to handle the situation.

7 Q Have you, yourself, utilized the virtual coach?

8 A Yes.

9 MR. GAUDIOSO: I'm sorry, can you just clarify, Nina, as a
10 store manager or as a district manager?

11 MS. MARKEY: Sure.

12 BY MS. MARKEY:

13 Q So, Scott, to be clear, all the questions I'm asking you
14 today are I'm asking of you about what you've done in your
15 capacity as a district manager. Do you understand that?

16 A Yeah.

17 Q And so far the questions I've asked you have all been with
18 regard to your time as a district manager.

19 A Correct.

20 Q Have you answered all of those questions regarding your
21 time as a district manager?

22 A Yes.

23 Q And moving forward if I ever need to ask you anything
24 about your experience as a store manager, which I don't expect
25 to, I will definitely let you know that. Otherwise, assume I'm

1 asking about your time as a district manager in District 761.

2 With regard to the virtual coach, can you explain a little
3 bit more what the virtual coach is?

4 A Sure. It's an application that we would go onto the
5 partner hub, which is basically Starbucks -- it's a website
6 where we have most documents and support files for the field.
7 And what it does is, depending on the scenario it could be time
8 and attendance, it could be, you know, violence in the
9 workplace. They have drop down tabs, so you kind of click on
10 it and it kind of keeps drilling down to get to the right level
11 of documentation for the specific scenario that we would be
12 talking about.

13 Q And as a district manager, have you, yourself, accessed
14 virtual coach?

15 A Yes.

16 Q Can you give us an example of what kind of occurrence
17 you've had to consult or that you've consulted virtual coach
18 on?

19 A Sure. Recently we had two partners in a store have a
20 verbal altercation with one another, some language,
21 inappropriate language was used. So we went into the virtual
22 coach and worked through the virtual coach to get the right
23 level of documentation for the partner.

24 Q And when you say we, who is the we?

25 A Me and my store manager.

1 Q Do you recall who that store manager was?

2 A I do not off the top of my head.

3 Q Was it a store manager in District 761?

4 A It was, yes.

5 Q Do you know where Ms. McDonald is located?

6 A In New York.

7 Q Do all of the partners in your district receive the same
8 employment benefits?

9 A They do, yes.

10 Q Is there something available to partners that identifies
11 those benefits?

12 A Yes. There's the first day of start, they would get a
13 benefits guide.

14 Q And do all partners receive a benefits guide on the first
15 day of employment?

16 A Yes.

17 MS. MARKEY: I'm going to share what we have marked as
18 Employer Exhibit 4. Our exhibits are marked sequentially but
19 they won't be utilized sequentially.

20 Okay. Hopefully everyone is just seeing the U.S. benefits
21 plan description, 2020/2021.

22 HEARING OFFICER POWELL: Yes.

23 BY MS. MARKEY:

24 Q Is this the benefits guide that you were referring to,
25 Scott?

1 A Yes.

2 Q And this is the one that all partners receive on their
3 first day of employment?

4 A Yes.

5 Q And the table of contents that I've flipped to on page 5
6 of the exhibit, is this the same table of contents that all
7 partners receive in your district?

8 A Yep, that's correct.

9 Q And do you have any understanding as to whether it's the
10 same table of contents for the guide received by all partners
11 outside of your district?

12 A It should be the same for every partner.

13 MS. MARKEY: We'd like to move first Starbucks Hopewell
14 Employer Exhibit 4.

15 HEARING OFFICER POWELL: When you say, Mr. Thibedeau, that
16 this is for all partners, you mean all partners across the
17 country?

18 THE WITNESS: Correct, yeah.

19 HEARING OFFICER POWELL: All right. Mr. Gaudioso?

20 MR. GAUDIOSO: No objection.

21 HEARING OFFICER POWELL: Okay. So received.

22 (Employer's Exhibit No. 30 received)

23 BY MS. MARKEY:

24 Q Scott, do you know who determines what benefits a partner
25 receives in your district?

1 A Yeah, that would be Starbucks corporate.

2 Q And do you have any say on what benefits the partners in
3 your district receive?

4 A I do not.

5 Q Do you have any authority to change the benefits received
6 by the partners in your district?

7 A I do not.

8 Q Does your store managers -- do your store managers have
9 the authority to change or alter the employment benefits
10 offered by Starbucks?

11 A No, they do not.

12 Q Do you have uniforms at Starbucks?

13 A We have a dress code.

14 Q Can you roughly describe for me what that dress code is
15 for baristas and shift supervisors?

16 A Sure. You can find it on general web search, it's called
17 Starbucks Look Book (ph). It's really just -- you know, we
18 always wear the green apron and then there's just different
19 color patterns that we can wear and that's what -- it's on the
20 Look Book website.

21 Q And who determines or who created that Starbucks Look
22 Book, do you know?

23 A Starbucks corporate.

24 Q And do you know who determined what the dress code would
25 be?

1 A I'm sorry, can you repeat the question?

2 Q Do you know -- a similar question, do you know who
3 determined what that dress code would be?

4 A Oh, it would be Starbucks corporate office.

5 Q Do you have any say over the dress code and changing the
6 dress code?

7 A No, I do not.

8 Q Do store level managers have the ability or authority to
9 change the dress code?

10 A No, they do not.

11 Q And do all partners within the district adhere to the same
12 dress code?

13 A Yes.

14 Q Do you have any operational policies that apply to
15 partners in the district?

16 A Sure, yes. We have rules and routines in our stores, so
17 we have our play builder which then assigns our partners to
18 whether it be POFs, espresso bar, cold bar, drive-through,
19 order, drive-through window, that's all consistent. We have
20 our ordering system, IMS, Inventory Management System, which is
21 an operational tool that's consistent across the board. Those
22 are a couple of examples.

23 Q And do those examples you gave us of the operational
24 policies do they apply uniformly throughout the district?

25 A Yes.

1 Q Do you know who establishes those operational policies?

2 A Starbucks corporate.

3 Q Do store level managers have the ability or authority to
4 change those operational policies?

5 A No, they do not.

6 Q I'm going to pull up what's marked as Hopewell --
7 Starbucks Hopewell Employer Exhibit 3. Scott, can you see
8 what's marked as Hopewell Employer Exhibit 3, a document that
9 appears to be titled Make the Right Call?

10 A Yes.

11 Q Can you tell us what this is?

12 A Sure. It is -- it's posted in the back of house for all
13 my stores and it is a way for our partners to know who they can
14 contact if they would like to voice their concerns or workplace
15 issues. So it lists store manager, district manager, regional
16 director, regional vice-president, partner resources manager
17 and then it also, as our business ethics and compliance phone
18 number on there, and also our partner relations phone number on
19 there.

20 Q So the typed part, is that a document -- do you know where
21 that document's received from?

22 A Starbucks corporate.

23 Q And so you don't do anything to create or change the
24 typewritten part of this document?

25 A I do not.

1 Q Do you know who writes in the handwritten part where it
2 says store manager, district manager, regional director,
3 regional vice-president and partner resources manager?

4 A Sure. The store manager generally writes that in.

5 Q And it looks here the store manager is Misty, do you know
6 whether this is the Make the Right Call document for the
7 Hopewell store?

8 A It is, yes.

9 Q And on the bottom, do you see where it says partner
10 resources manager, Tina?

11 A Yes.

12 Q Is that Ms. McDonald who you had mentioned before as the
13 partner resources manager for your district?

14 A Yes, it is.

15 MS. MARKEY: We'd like to move for the admission of
16 Starbucks Hopewell Employer Exhibit 3.

17 MR. GAUDIOSO: Can I just get a clarification? When you
18 say that this is the Hopewell Store's Make the Right Call, the
19 document itself, is that a national document and those numbers
20 and those individuals are specific to Hopewell?

21 THE WITNESS: Those are the local leaders.

22 MR. GAUDIOSO: But the document itself is the same
23 document across Starbucks?

24 THE WITNESS: Correct.

25 MR. GAUDIOSO: Thank you, no objection.

1 HEARING OFFICER POWELL: No -- all right. Hearing no
2 objection, the document is received.

3 (Employer's Exhibit No. 3 received)

4 BY MS. MARKEY:

5 Q If you can look at what has been marked as Hopewell
6 Employer Exhibit 6, it's a picture of what appears to be an
7 iPad with Play Builder at the top. Can you tell us what this
8 is?

9 A Sure. It's the Play Builder tool that's on every iPad
10 across every single store. It basically takes historical sales
11 data from the store and it gives the shift supervisor, store
12 manager, whoever's leaving the play, the best lay out to deploy
13 their partners to meet the customer's demand.

14 Q Have you ever heard the term partner in charge?

15 A Sure, partner in charge, yes.

16 Q What does that mean?

17 A That would be either the key holder, shift supervisor key
18 holder that's leading the shift.

19 Q Does the partner in charge utilize the Play Builder tool?

20 A Yes.

21 Q And is this utilized or is there a certain time of day
22 that this utilized?

23 A This should be utilized through all day parts.

24 Q So is it accurate to say that multiple people would
25 utilize the Play Builder?

1 A Yes.

2 Q Is the Play Builder something that's utilized by all of
3 the stores within your district?

4 A Yes.

5 Q And when you look at the -- you mentioned the Play Builder
6 talking about the different stations or where partners will be
7 placed; is that correct?

8 A Yes.

9 Q How do partners know what they're supposed to do once
10 they're in that placement?

11 A There's roles and routines that we have that's
12 standardized for every position at Starbucks.

13 Q And is that a written document?

14 A They are written documents, yes, you can find those on the
15 hub.

16 Q And do you change those written documents as district
17 manager, are you authorized to do so?

18 A I cannot change roles and routines, no.

19 Q Let's go back to the Play Builder that's in front of you,
20 are you authorized to make any changes to the template of the
21 Play Builder that comes up on the iPad?

22 A No.

23 Q Is the store manager authorized to make any changes to the
24 template of the Play Builder that is then filled in by the
25 player in charge or partner in charge?

1 A No.

2 MS. MARKEY: We'd like to move for the admission of
3 Hopewell Employer 6?

4 HEARING OFFICER POWELL: Mr. Gaudioso?

5 MR. GAUDIOSO: No objection.

6 HEARING OFFICER POWELL: All right. Just once again, Mr.
7 Thibedeau, this is -- this Play Builder it's across the country
8 or is it something that's unique to your district?

9 THE WITNESS: Across the country.

10 HEARING OFFICER POWELL: All right. Admitted -- is
11 received, I'm sorry.

12 (Employer's Exhibit No. 6 received)

13 BY MS. MARKEY:

14 Q I jumped ahead to a document before I finished talking
15 about the last one that I'd showed you. So if you would take a
16 look at what's on the screen and being shared and marked as
17 Starbucks Hopewell Employer Exhibit 5. You had mentioned there
18 being roles and routines that tell the partners what they're
19 supposed to do when they're in the position; is that correct?

20 A Yes.

21 Q Is this one of them?

22 A Yes, it is. It's our beverage routine.

23 Q And it says a quick reference guide at the top. Are there
24 quick reference guides for a variety of topics or a variety of
25 routines?

1 A For every position that you would find on Play Builder
2 there is a quick reference for the routine.

3 Q And who provides or how do the -- in this case, in the
4 beverage routine, who receives this?

5 A All partners have access to it as part of their training.

6 Q And do you know who creates the document?

7 A Starbucks corporate.

8 Q And is it utilized throughout your district?

9 A Yes.

10 Q Including the petitioned for store?

11 A Yes.

12 MS. MARKEY: We'd like to move for the admission of
13 Starbucks Hopewell Employer Exhibit 5.

14 MR. GAUDIOSO: Just to clarify, that's a national
15 document, that's just not peculiar to Hopewell?

16 THE WITNESS: No, that's a national document.

17 MR. GAUDIOSO: Okay. No objection.

18 HEARING OFFICER POWELL: So received.

19 BY MS. MARKEY:

20 Q And you mentioned that partners receive some of these
21 quick reference guides for in their training; is that correct,
22 Scott?

23 A Yes. Their trainers will use them when they're training.

24 Q And what kind of training do baristas receive?

25 A They -- we call it barista basics and it basically will

1 cover all of the different positions that we have in the store
2 over a generally 24-hour window.

3 Q And how is it determined where partners are going to do
4 their training?

5 A I'm sorry, repeat the question.

6 Q How is it determined where partners are going to do their
7 training and particular baristas?

8 A Sure. Generally they will train in their hiring store,
9 but there's multiple circumstances where that store might be a
10 little bit understaffed, so we will train partners in other
11 stores in the district to support.

12 Q Have you had partners in your district that have trained
13 in a store other than a store that they're going to work in?

14 A Yes.

15 Q And have you been involved in that decision-making?

16 A I'm aware generally, yes.

17 Q And how are you made aware?

18 A We have a partner planning meeting that we do monthly with
19 my team, with me and my store managers where we talk around
20 staffing needs across the portfolio, and generally we'll talk
21 around there, hey, I'm hiring a partner, they're going to go
22 train at this store or just when I'm meeting one-on-one with my
23 store managers they'll also inform me of hey, I hired this
24 person, but I'm going to have X manager train for me.

25 Q And in the petitioned for store, has the store manager,

1 Misty, ever spoken with you about where baristas or shift
2 supervisors are going to train?

3 A Yes, I mean, we just recently spoke about -- we hired a
4 partner in that store, but we're going to train them in
5 Hopewell, but we're actually going to send them to Mercer Mall,
6 who's understaffed or needed support with training.

7 Q And is Mercer Mall one of the other stores in your
8 district, in District 761?

9 A Yes, it is.

10 Q How many stores are there in District 761?

11 A 12.

12 Q And has that been true for the duration of your time as
13 district manager?

14 A No, it's varied at times.

15 Q And do you know what vary is based upon?

16 A Just head count. We never want district managers to take
17 on too many stores, because it makes it tougher to support. So
18 when we have had counts getting higher, we do realignment.

19 Q And so that realignment, it's your understanding to make
20 sure that it's an appropriate number of partners that you're
21 responsible for as a district manager?

22 A Correct.

23 Q And so it's not based, your understanding, just upon the
24 number of stores in a district?

25 A Yes, it could be that as well.

1 HEARING OFFICER POWELL: I'm sorry, could you -- Ms.
2 Markey, I'm a little confused about that. Could you qualify --

3 MS. MARKEY: Sure.

4 HEARING OFFICER POWELL: -- or clarify?

5 MS. MARKEY: Yeah, I can ask the question more clearly.

6 BY MS. MARKEY:

7 Q So you said that the number of stores that you have in
8 your district is determined by the head count; is that correct?

9 A No, by the store count. So you don't want to have -- you
10 know, usually like 12, 13. When it starts to get to 14 or 15
11 you have too many.

12 Q And when you say too many, do you mean too many stores or
13 too many partners or both?

14 A Both.

15 Q If we can -- I'm going to share my screen again --

16 HEARING OFFICER POWELL: All right. All right. I'm sorry
17 again, Ms. Markey, but I just want to make absolutely clear for
18 the reader of the record. So, Mr. Thibedeau, you're saying if
19 a store -- if the stores average more than 12 or so employees
20 or partners for that store, then you would create a new
21 district, you would get another store or?

22 THE WITNESS: I wouldn't be the one to make those
23 decisions unfortunately, you'd have to ask my regional director
24 Jennifer Pivarnik who would make those decisions behind why we
25 would realign, but generally for me knowing -- a perfect

1 example is, I was opening new stores, I was getting to the
2 point where I was going to have 15 stores. I brought it to her
3 attention and we realigned a store off to another district
4 manager.

5 HEARING OFFICER POWELL: Okay. Got it. And the same
6 holds true with partners?

7 THE WITNESS: Right.

8 HEARING OFFICER POWELL: Okay. Go ahead, Ms. Markey.

9 MS. MARKEY: Sure, thank you.

10 BY MS. MARKEY:

11 Q Give me one minute, I'm going to share my screen. Scott,
12 I'm sharing my screen and showing what's been marked as
13 Starbucks Hopewell Employer Exhibit 1. Can you tell me what
14 that document is?

15 A Sure. That is my current district roster for District
16 761.

17 Q And does this list identify all the stores currently in
18 your district, 761?

19 A Yes, it does.

20 MS. MARKEY: We'd like to move for the admission of
21 Starbucks Hopewell Employer Exhibit 1.

22 MR. GAUDIOSO: No objection.

23 HEARING OFFICER POWELL: All right. So received.

24 (Employer's Exhibit No. 1 received)

25 Q Is there a geographic area, Scott, that you describe as

1 being encompassed by or that your district is included in?

2 A Sure. The majority -- I have ever single store in Mercer
3 County and then we do cover a few stores in the surrounding
4 area. I have one store in Middlesex, one store in Somerset and
5 one in Burlington County.

6 Q And are there stores that are located to the south of
7 those three counties in New Jersey that you're aware of?

8 A There are stores to the south, yes.

9 Q And are those in different districts?

10 A Yes.

11 Q Do you have any oversight or interaction as a district
12 manager with those stores or the partners in those stores?

13 A I do not.

14 Q Are some of those stores located relatively close to the
15 stores within your district?

16 A No, not particularly.

17 Q And are those stores in the same -- I sort of asked you a
18 couple of questions earlier, what is the area or region that
19 your district is in?

20 A My area is Area 81.

21 Q And is there a region or some other kind of geographic
22 grouping above that?

23 A Sure, it's Region 7 New York Metro.

24 Q And is that commonly referred to as the New York Metro
25 Region?

1 A Yes.

2 Q And the stores that are to the south of you in New Jersey,
3 do you know whether they're part of the same region?

4 A They are not.

5 Q Do you know what region they're part of?

6 A I don't know the number, but they report to the Northeast
7 Region.

8 Q If you can see on the list here, are the stores noted in
9 any way as -- sorry, scratch that.

10 What is a café store?

11 A What is a café store? A café store is -- it doesn't have
12 a drive-through, so you come in and grab your beverage at the
13 register. There's no -- or mobile order pay, there's just no
14 option for a drive-through.

15 Q Do you have cafes or drive-throughs in your district?

16 A Yes, I have four cafes and eight drive-throughs.

17 Q Approximately how many partners total work in District
18 761?

19 A Around 320.

20 Q When a DM goes into a store, what's your understanding of
21 the expectations as to what you're supposed to be doing in the
22 stores in your district?

23 A Sure, yeah. Again checking in with my manager, checking
24 in with my partners, obviously making sure that they are using,
25 you know, Play Book, they're running the right routines in the

1 store, giving a good consistent customer experience. I'll
2 generally check on inventory levels and make sure we're
3 executing inventory the way we should be. And also just
4 checking overall cleanliness is a part of that as well, so I'll
5 be checking for cleanliness to make sure that we are food safe.

6 Q How do or do DMs communicate with stores?

7 A Oh, yes.

8 Q How do you communicate with the stores or who do you
9 communicate with in the stores?

10 A Sure. I can communicate with any store partner, but I
11 generally communicate when I'm not in stores with the store
12 manager.

13 Q And how do you communicate with the store manager?

14 A I believe it'll be by e-mail, phone or text.

15 Q And do you ever communicate with the group of managers in
16 your district?

17 A I do, yes.

18 Q And when you do that, how do you do that?

19 A There is a group chain for emergencies that we use, and
20 there's also I use an e-mail, I have e-mail group that I'll e-
21 mail them all if there's important information I need to
22 forward to the entire group. And then we also communicate
23 weekly on our Monday huddle call.

24 Q And what is the weekly huddle call?

25 A Sure. I spoke about that earlier, so every Monday at noon

1 we get together. We talk around like last week's results and
2 celebrate those wins. We talk around the week ahead, like our
3 weekly update, what the priorities are for the week. And then
4 we kind of talk about miscellaneous topics, if there's
5 something important that we need to touch on, we touch on it at
6 that time.

7 Q And I'll be sharing my screen again to pull up what's been
8 marked as Starbucks Hopewell Employer Exhibit 7. Can you see
9 what in the top is marked as Starbucks Hopewell Employer 7,
10 Scott?

11 A Yes.

12 Q What is this?

13 A That is the calendar invite that goes out to my district
14 for our weekly standing huddle.

15 Q And it looks like there's only three names here in the two
16 lines. Do you see that?

17 A Sure, yeah. If you scroll down, it has all of the
18 managers.

19 Q And is that all of the store managers in the district?

20 A Correct.

21 Q Would it be accurate to say that they're not populated
22 here because this too is probably not enlarged?

23 A Correct, yes.

24 Q Would you normally invite to the District 761 manager
25 huddle all of the store managers in your district?

1 A Yes.

2 Q And did you set the or what -- did you draft this part of
3 the invite?

4 A Yes, yes.

5 Q And did anyone in Starbucks corporate or anyone else tell
6 you what to cover in this particular district manager huddle
7 meeting?

8 A No.

9 Q And how did you determine what to put into that agenda?

10 A Just what I thought were priorities. Again, I think like
11 I said recognizing the team for their successes, going through
12 our weekly update and priorities for the next week are
13 important.

14 Q And were these things that you thought were important for
15 all of the stores within your district?

16 A Yes.

17 Q And when you have this weekly manager huddle meeting, do
18 you normally set the agenda?

19 A It's a standard agenda.

20 Q And what do you mean by standard agenda?

21 A So that what you're looking at right there on the screen,
22 the coffee tasting, recognition and results we could update
23 miscellaneous topics, that's the agenda for every Monday's
24 meeting.

25 Q And then do you --

1 A Oh, sorry.

2 Q Sorry, go ahead.

3 A Go ahead, ask your question.

4 Q The miscellaneous topics what the 15 minutes could
5 include, does that ever change what's included in that two
6 lines for the miscellaneous topics?

7 A Sure, yeah. Depending on like sometimes we have one of my
8 managers who will do a business review with the team over our
9 P&L, our profit and loss statement. Carol Ann, my community
10 lead, if there's something going on in the community she'll
11 present it forward to the team, and it just asks for time in
12 advance on the meeting to chat with the team.

13 Q And do you determine what miscellaneous topics to populate
14 for each of those weekly District 761 manager huddles?

15 A Yes.

16 MS. MARKEY: We'd like to move for the admission of
17 Starbucks Hopewell Employer Exhibit 7.

18 HEARING OFFICER POWELL: That's the complete document, Ms.
19 Markey, finding replacement if you're -- I can't tell if
20 there's anything below that. Is that the last line?

21 MS. MARKEY: Yes, that's the complete document.

22 HEARING OFFICER POWELL: Okay. Mr. Gaudioso?

23 MR. GAUDIOSO: No objection.

24 HEARING OFFICER POWELL: All right. So received.

25 (Employer's Exhibit No. 7 received)

1 BY MS. MARKEY:

2 Q Do you have -- other than the -- and I apologize, you may
3 have answered this earlier, Scott, and I missed it. In
4 addition to the weekly managers or manager huddle, are there
5 any other meetings that you hold at the district level with
6 your store managers?

7 A Yes. We'll do a partner planning meeting, I had mentioned
8 that one earlier. And we also would do our planning period
9 meeting as well. Those are two meetings that we do regularly.

10 Q And what is a period planning meeting?

11 A Sure, yes. So period planning meeting, so seven times
12 throughout the year Starbucks puts what they call their period
13 planning kit out. And what the period planning kit does is
14 it's basically updates to operations, programs, training,
15 products, and they do it in a specific window of time, so that
16 managers, the field leaders, managers, myself can prioritize
17 and plan our time for the work ahead that we're going to do in
18 that period.

19 Q And do you have any discretion in what you -- when you
20 mean with -- sorry, scratch that.

21 When you meet with the store managers to discuss the
22 period planning guide, do you kind of have any or do you have
23 any input into how that's implemented in your district?

24 A No, I do not.

25 Q And do the store managers have any authority to deviate

1 from that period planning guide?

2 A No, they do not.

3 Q You said that you have partner planning meetings
4 regularly, how regularly?

5 A Monthly.

6 Q And what are partner planning meetings?

7 A Sure. We talk about, you know, we go through all of our
8 stores what their staffing needs may be, how we can support if
9 we have openings for shift supervisors so that we can get them
10 posted throughout the district, so people can apply.

11 We talk around how our talent is doing, how they're
12 trending for the next level, so whether it be baristas to shift
13 supervisors, shift supervisors to assistant store managers. We
14 have those types of discussions during that meeting.

15 Q Do you ever during those meetings discuss moving around
16 partners within the district based upon how talent is trending
17 or what you need for the next level?

18 MR. GAUDIOSO: I'm going to object at this point. I don't
19 mind a little bit of leading, but this has been repetitive, and
20 you know, can we not ask so many leading questions of this
21 witness.

22 MS. MARKEY: I understand, Mr. Gaudioso, I would like to
23 add that I am quoting verbatim what he just said to me, so I
24 don't know how that's leading if that's what he just said to
25 me.

1 HEARING OFFICER POWELL: Well, yeah, I'm going to overrule
2 the objection. Yeah, for that basis. She did kind of just say
3 what he was -- what he had said. But, Ms. Markey, do you --
4 how much more do you have with this particular witness? I'm
5 only asking because it's 12:30 and I just wanted to get an idea
6 if we should finish this witness before we take a lunch break
7 or if you'd like -- or we can do what you'd like to do.

8 MS. MARKEY: I probably do have half an hour or so with
9 him.

10 HEARING OFFICER POWELL: Okay. All right.

11 MS. MARKEY: Maybe more, I'm trying to look at the number
12 of documents, so that's always longer. So at least half an
13 hour. I think if you want to take a lunchbreak I can look and
14 try to streamline it.

15 HEARING OFFICER POWELL: All right. Off the record for a
16 second.

17 (Paused at 12:27 p.m.; reconvened at 12:29 p.m.)

18 HEARING OFFICER POWELL: Yeah, okay.

19 BY MS. MARKEY:

20 Q Scott, before we had had a discussion about scheduling for
21 the day off the record, I was asking you questions about the
22 partner planning meetings that you said you had. And you had
23 said that in these meetings you discuss with the store managers
24 how talent is trending and what the needs are for shift
25 supervisors, for example, to post throughout the district; is

1 that correct?

2 A Yes.

3 Q And in those discussions, do you ever discuss moving
4 partners within the district?

5 A Yes.

6 Q Can you give me an example of that?

7 A Sure. We talk around -- we're opening -- right now, we're
8 getting ready to open a new store in Montgomery and so we're
9 taking partners from our Hillsboro location, our Deanland
10 location, our Princeton location and they're going to be moving
11 into that store when it opens.

12 Q And are those stores that you mentioned stores within
13 District 761?

14 A Yes, they are.

15 Q Is there anything else that you discuss at the period
16 planning meeting other than the period planning guide?

17 A We'll also review some -- Starbucks gives a period
18 planning kit, which encompasses the period planning guide and
19 also on Mount Bruin (ph), which is like a magazine styled
20 document for partners in the store. We'll also review that as
21 a team.

22 Q Do you recall what the latest period planning kit was that
23 you received?

24 A We just received spring, so we're in the planning phase
25 for spring now.

MR. GAUDIOSO: I'm sorry, have we changed -- is it partner planning or period planning?

THE WITNESS: Two different meetings.

MR. GAUDIOSO: Okay. I'm sorry, I missed that.

MS. MARKEY: And just to be clear for the record, I may have interposed them, I don't think so.

BY MS. MARKEY:

Q But, Scott, can you just tell us what the period planning meetings are, very briefly, versus the partner planning meetings?

A Sure. So the partner planning meetings where we talk around the partners, like I said, like looking for shift supervisors, like staffing needs around the briefs sets that meeting. The period planning meeting is around, you know, updates to operations, programs, training, product and we have that meeting so the managers can kind of start to plan and prioritize their time for the work during the next period.

MS. MARKEY: And I'm going to be sharing my screen to show what's marked as Starbucks Hopewell Exhibit 8.

Q Scott, take a look at this document. Is this the period planning guide that you were referring to earlier, or an example of one?

A That's an example of one, yes.

Q And it looks like at the bottom, there's a DM and an SM there --

1 A Yes.

2 Q -- and intent, just program updates, commercial priorities
3 and key information for a period so leaders can prioritize and
4 plan.

5 A Correct.

6 Q And would it be accurate to say this is the one for
7 winter?

8 A Yes, this is the current one that we're using now.

9 Q And if you could look, I have opened page four of the
10 document. And do you see the chart that goes from engaging to
11 advising?

12 A Yes.

13 Q Is this something that you utilized or who you utilizes
14 this?

15 A We all do, myself, my store managers, it's how we assess
16 talent, whether they're learning, owning or advising in their
17 role.

18 Q Are you involved with assessing talent in your district?

19 A Yeah.

20 Q Can you give us an example or an explanation of how you do
21 that?

22 A Sure. Observing coach time when I'm in a store, watching
23 the team work, shoulder to shoulder with my store manager, will
24 be assessing talent, see how they're doing, that's a normal
25 occurrence.

1 Q Do your store managers discuss those kind of talent issues
2 that you just outlined with you?

3 A Yes.

4 Q How often?

5 A If I'm in the store quite regularly during the partner
6 planning meetings that we have monthly, this kind of
7 conversation will come up.

8 Q Do store managers discuss promotions with you?

9 A Yes.

10 Q Are there any other kinds of -- when you were talking
11 earlier about what the talent needs were and development within
12 the district, can you give me any other examples of things that
13 fall -- of what you're talking about there?

14 A Sure. You know, another one that comes to mind recently
15 is that we had an opening in Mercer Mall for a shift supervisor
16 and we had talent in my Hamilton store. A barista that was
17 ready to go, but there was no opening ready to go to the next
18 level into the shift supervisor level, we didn't have an
19 opening in Hamilton. So they applied for the Mercer Mall
20 opening and they were one of the few people that applied for
21 it, and got the promotion and went to that store.

22 Q And were you involved in that decision-making that you
23 just described?

24 A No, I don't make -- I don't do the interviews, I don't
25 make those decisions. That's done by the store managers, they

1 --

2 Q And were you consulted at all by the store managers in
3 making that decision?

4 A Sure, yes, they'll always let me know when they're making
5 that decision.

6 MS. MARKEY: We'd like to move for the admission of
7 Employer Exhibit 8.

8 MR. GAUDIOSO: That's --

9 HEARING OFFICER POWELL: Mr. Gaudioso?

10 MR. GAUDIOSO: Yeah, just to be clear that's a national
11 document, that's not peculiar to this district, correct?

12 THE WITNESS: That is correct.

13 MR. GAUDIOSO: Okay. No objection.

14 HEARING OFFICER POWELL: All right. So received.

15 (Employer's Exhibit No. 8 received)

16 BY MS. MARKEY:

17 Q Is there any guidance that you receive as district manager
18 with regard to placement of items in your stores?

19 A Yes. We have what is called a Siren's Eye which are
20 schematics for all the departments of our store, whether it be
21 pastry case, signage, wall base, merchandise wall base.

22 HEARING OFFICER POWELL: I'm sorry, what was the called?

23 THE WITNESS: It's called Siren's Eye.

24 HEARING OFFICER POWELL: Siren's, S-I-R-E-N-'-S, E-Y-E?

25 THE WITNESS: That is correct.

1 HEARING OFFICER POWELL: Okay. I just want to make sure
2 it's correct for the reader of the record. All right.

3 BY MS. MARKEY:

4 Q Do you have any ability to deviate from the Siren's Eye as
5 district manager?

6 A No, I cannot change it.

7 Q And does the store manager have any ability to deviate
8 from the Siren's Eye as store manager?

9 A The only time we would deviate from the Siren's Eye as a
10 store manager, would be is if we didn't get a specific product
11 in or we ran out of a product and we would adjust accordingly.

12 HEARING OFFICER POWELL: Okay. I'm sorry to interrupt.
13 There's a Tina McDonald in the waiting room. Is that --

14 MS. MARKEY: Yes, she's Starbucks partner resources.

15 HEARING OFFICER POWELL: All right.

16 MR. GAUDIOSO: Is she a potential witness?

17 MS. MARKEY: I don't know at this point. She was in
18 earlier.

19 HEARING OFFICER POWELL: Okay. Actually I do believe she
20 was in earlier. All right. I'm going to let her in.

21 MS. MARKEY: Am I okay to proceed, Mr. Powell?

22 HEARING OFFICER POWELL: Oh, yes, I'm sorry.

23 BY MS. MARKEY:

24 Q I'm going to be sharing my screen to show Starbucks
25 Hopewell Employer Exhibit 9. Scott, is this the Siren's Eye

1 that you were referring to?

2 A That is a Siren's Eye, yes.

3 Q And it looks like is to launch in August 24th, 2021.

4 A Correct, yeah.

5 Q And do you receive this as district manager?

6 A I have access to see it, yes.

7 Q And it looks like it's a 19-paged document, I'm not going
8 to go through the entirety of the document, but from the first
9 few pages I'm going through, is this fairly consistent with the
10 other Siren's Eye that you receive?

11 A Yes, it is.

12 MS. MARKEY: We'd like to move for the admission of
13 Starbucks Hopewell Employer Exhibit 9.

14 HEARING OFFICER POWELL: Mr. Gaudioso?

15 MR. GAUDIOSO: No objection.

16 HEARING OFFICER POWELL: All right. Once again, is this a
17 national document or is this something unique to the district?

18 THE WITNESS: A national document.

19 HEARING OFFICER POWELL: All right. Received.

20 BY MS. MARKEY:

21 Q What is the hiring process for partners who want to work
22 at a store in your district?

23 A They would go on Starbucks.com careers and apply to one of
24 the stores or multiple stores in the district and then the
25 store managers would then reach out to the applicant and

1 schedule an interview.

2 Q And you had mentioned before about posting for open
3 positions; is that correct?

4 A Well, we post for open within the district for open shift
5 supervisor positions, we post within our district, that's
6 correct.

7 Q And how is that process started?

8 A The store manager would go on the tablet, the iPad in the
9 store and they would post that they have an opening, so that
10 partners in other stores can see that posting.

11 Q Are you involved at all in the hiring process of partners
12 in your district?

13 A I don't make decisions on briefs to hire, my store
14 managers do.

15 Q How about shift supervisors?

16 A It's an informed, so they'd make the decision on the hire
17 and they'd just inform.

18 Q Are there any tools that are utilized in determining
19 whether or not additional partners are needed?

20 A We have an availability assessment tool that talks around
21 whether we have the right head counts or not.

22 Q Do you know what the name of that tool is?

23 A I believe it's Availability Assessment Tool.

24 Q Do you ever utilize that tool?

25 A Sure.

1 Q And could you give us an example or a description of what
2 in what circumstances you've utilized that tool?

3 A It gets updated weekly, so I'll use it quite regularly
4 just to see where my staffing levels are across my team. So
5 it's just a regular habit for me to see or if a customer -- I'm
6 sorry, if a manager is saying that they might potentially be
7 understaffed, I'll take a deeper look into it at that specific
8 store just to see how accurate it is and where those needs
9 might be.

10 Q And how often do you do that?

11 A Like I said, I check the report pretty much weekly. I
12 might dig in a little deeper, it just depends on how the --
13 like conversations I'm having.

14 Q Do you ever have a partner who was rehired?

15 A Sure.

16 Q Have you ever been involved in a decision to rehire a
17 partner?

18 A I'm generally not in that process. They would -- there's
19 a process for it where the store manager would call partner
20 resources to make sure when they left, they left on good terms
21 from the company and they were rehireable. And then would go
22 ahead and proceed to bring the partner back on.

23 Q And do they -- when you say they proceed to bring the
24 partner back on, are you referring to the store manager?

25 A Store manager, yes.

1 Q And does the store manager speak with you before bringing
2 that partner back on?

3 A Sometimes they do, yes, they'll be like hey, I'm rehiring
4 this partner.

5 Q Who interviews baristas?

6 A Store managers.

7 Q Are you ever involved with interviews?

8 A I have if we have like a job fair, I will participate to
9 support my managers. But generally day-in and day-out I do not
10 generally interview for barista.

11 Q Do you ever discuss interviews with your store managers?

12 A More like shift supervisor interviews.

13 Q Do you recall when you last or an example when you
14 discussed a shift supervisor interview with a store manager?

15 A Recently I can't think of one off the top of my head,
16 shift supervisor. I'm sorry, one's not coming to mind right
17 now, sorry.

18 Q And to the extent that there's an interview, what's the
19 next step in the hiring process?

20 A Oh, they would process. We have a system called Taleo
21 that they would move them from -- they would promote them
22 through that system.

23 MR. GAUDIOSO: I'm sorry, when you say they, can you
24 explain who they is?

25 THE WITNESS: Store manager, the store manager would

1 promote them through the system, I'm sorry.

2 MR. GAUDIOSO: Thank you.

3 BY MS. MARKEY:

4 Q And does the store manager talk to you before promoting
5 them through the system?

6 A Generally, yes.

7 Q You had mentioned before I believe barista basics
8 training; is that correct?

9 A Correct.

10 Q And what is barista's basics training?

11 A Sure. It breaks the first -- when I say 24 hours, not one
12 day, but like a 24-hour period that they're in training, it
13 breaks it down into different individual blocks for them so
14 they can digest all the different roles and routines, and then
15 just the culture of Starbucks.

16 Q And who creates that training plan?

17 A Starbucks corporate.

18 Q Is there any ability for you as a district manager to
19 change that training?

20 A No.

21 Q Is there any ability for a store level manager to change
22 that training?

23 A No.

24 Q Do you ever have instances with staffing where you are --
25 you had mentioned earlier being short staffed, what does that

1 mean?

2 A Generally speaking if we say we're short staffed we either
3 don't have the partners to operate a store at its full
4 operational capacity, so we'll reduce hours, or we're at a
5 point where we may not be under staffed but we're in a place
6 where if a partner decided to resign, or we have to let a
7 partner go, we would have to make that decision so that's where
8 we consider -- what I would say short staffed, but those are
9 some examples where we kind of like lead in a little bit more.

10 Q And in those situations where you're staffed, whether
11 you're not at operational capacity or you've had an issue, like
12 you said with a partner resigning or calling out, what do you
13 do to address the staffing being short staffed?

14 A Sure. We'll adjust the hours of operation.

15 MR. GAUDIOSO: I'm sorry, I don't mean to interrupt, but
16 when you say will, I thought the question was directed to you,
17 but if you're saying will, it sounds to me like there's other
18 people involved.

19 THE WITNESS: So I will make the decision to reduce the
20 hours of operation for that store, I have that decision-making
21 ability, sorry.

22 MR. GAUDIOSO: Thank you.

23 BY MS. MARKEY:

24 Q Can a store manager to make the decision to reduce the
25 hours for their stores?

1 A They cannot.

2 Q Is there anything else that you can do other than reducing
3 the hours for the store when you have a staffing issue?

4 A We could close different channels down. Sometimes we can
5 turn off the MOP so we wouldn't have any of the mobile order
6 and pay coming through, and a drive-through --

7 MR. GAUDIOSO: I'm sorry, and again, but when you say MOP,
8 when you say channels, when you say MOP, can you just --

9 MS. MARKEY: I'll have him define it.

10 THE WITNESS: Mobile order and pay. So we generally have
11 the café, so you walk up and order on the POS, you have mobile
12 order and pay where a customer could order on their phone to
13 have product or their order sent to the store to be prepared in
14 advance of them getting to the store, or they could go through
15 drive through, those are different channels that we have.

16 So, yeah, we can turn off the mobile order and pay so that
17 they're not getting so much orders coming through, so that they
18 can meet the demand of the customer that's coming through the
19 door or coming in through the drive-through.

20 HEARING OFFICER POWELL: And again, you're the one who
21 makes that decision.

22 THE WITNESS: I'm the one that makes that decision, that's
23 correct.

24 BY MS. MARKEY:

25 Q And is the store manager able to make that decision on

1 their own?

2 A No, they are not. There's a discussion between myself and
3 the store manager and I make that decision.

4 Q Do you ever get involved with discussions involving
5 staffing when there's staffing issues?

6 A Yes.

7 Q Can you explain for us what -- how you've gotten involved
8 in those discussions related to staffing issues?

9 A Sure. When they're understaffed or we lose a set of
10 partners, I'll sit with my store manager. We'll create a plan
11 first of all -- we'll create a plan around like this is the
12 window of time, what do we have to do to hire against it, can
13 we look at is there potential transfers to come into the store,
14 we'll look through that manager's Taleo to make sure they have
15 a good handle on the applicant flow into their own system.

16 So those are some of the things that we'll do regularly
17 when we have that happening. And then there's a check-in
18 weekly between me and the store manager when we're reducing
19 hours, there's a check-in weekly to see where they're at from a
20 staffing perspective to get a fact full operation.

21 Q And when you say that you will look at potential transfers
22 into the store with the store manager, can you explain for us
23 what that means?

24 A Yeah, yeah, looking -- talking to other managers that
25 might be in close proximity that may have a partner that is

1 looking for more hours, that's something we would normally do,
2 that maybe they might want to take a permanent transfer.

3 Q Do you ever talk with multiple store managers about
4 applicants for employment within the district?

5 A I'm not sure I understand the question.

6 Q Yeah, that was not a clear question, scratch that. I can
7 ask a better question.

8 When you talk about looking at the managers Taleo
9 applicant flow, can you explain that for us?

10 A Sure. Our application system is called Taleo. And --

11 HEARING OFFICER POWELL: I'm sorry once again, just for
12 the reader of the record, could you spell that, Mr. Thibedeau?

13 THE WITNESS: T-A-L-E-O.

14 HEARING OFFICER POWELL: Okay. Thank you.

15 Okay. Continue, I'm sorry.

16 BY MS. MARKEY:

17 Q I think you were telling us, Scott, I had asked you if you
18 could explain what you meant by when you said that when there's
19 understaffing you and the store manager will look at the
20 manager's Taleo applicant flow, if you could just describe for
21 us what that means?

22 A Sure. We can actually go into the -- I can go into the
23 system, I can look at any specific store in my district, see
24 how many potential partners applied for that specific store.
25 So we'll review candidates to see how -- do we have one or two,

1 are we not seeing enough, and then there's different resources
2 that I can leverage to support a store.

3 Q And what are some of those resources that you can leverage
4 to support a store?

5 A Sure. We have an hourly recruiter that can support. Her
6 name's Darlene McKnight. We can leverage her to help support
7 generate applicant flow for a specific store. She's helped
8 with a few of my stores.

9 Q Have you had any stores close for COVID related reasons?

10 A Absolutely, yes.

11 Q And in those circumstances, have the partners in that
12 store been able to work in other stores that remained open?

13 A Yes.

14 Q Walk us through or can you explain for us what happens
15 when you have a store that you've closed for COVID related
16 reasons.

17 A Yeah, absolutely. The most recent experience I can think
18 of is right after Christmas we had to close our Robinsonville
19 location just due to illness in the store, partners being sick.
20 And so we had so many isolations. So I worked with the store
21 manager with all the partners that were on the roster for the
22 time that we were closed, reach out to them and be like, hey,
23 we have Hamilton, we have Robinsville and we have Bordentown,
24 if you would like to work that shift, you know, you can go to
25 that store and work that shift so you can be paid for the time

1 that you were on the schedules.

2 Q Are you aware of any partners being directed to work at a
3 different store?

4 A We don't direct them to work at a different store.

5 Q Are you aware of partners arranging for coverage for their
6 shifts?

7 A That happens, yes.

8 Q And what is your understanding of how that happens?

9 A Sure. There's a couple of Honor My Partner Hours
10 application, which is our time system. They can release a
11 shift to look for coverage within their store. And if they
12 can't find anybody within their store, they can call other
13 stores within the district to ask if they are any partners who
14 may potentially want to work that shift.

15 Q Have you had any instances where partners have been
16 permanently reassigned to a different home store?

17 A I mean, that happens regularly through promotion and
18 through transfers.

19 Q Have you had any stores opened during the time that you've
20 been district manager?

21 A Multiple, yes.

22 Q And how do you staff the stores when you open them?

23 A With a mix of new hires and transfers from existing
24 partners.

25 Q And how do you get the transfers from existing stores?

1 A Yeah, a lot of times we'll talk about it during our
2 partner planning meetings. We'll create a flyer for the back
3 of house that will announce to all our partners that hey, we
4 have this store opening, it's an exciting opportunity if you're
5 interested in transferring please let your manager know.

6 Q Have you been -- are you involved at all with the transfer
7 of partners more generally, not related to the store closing or
8 the COVID closings that we were talking about, more generally
9 with regard to transfer of partners, are you involved at all?

10 A Yes, always.

11 Q How so?

12 A There's a transfer form that needs to be filled out. So
13 the partner would fill out a transfer request form. The store
14 manager would sign off on it and send it to me, and then I
15 would sign off on it and send it to the district that -- the
16 district manager that a partner would be going to if they're
17 relocating, wherever they're going. I connect with that
18 district manager.

19 Q Does the store manager, do you know, connect with that
20 district manager in the place that they're transferring to?

21 A Generally not, but I tend to copy them in on communication
22 in case that district manager has any clarifying questions
23 about the partner.

24 MS. MARKEY: I'd like to pull up and share one exhibit,
25 and I think, Mr. Powell, if we're able to take a break for

1 lunch, I don't know that I'll be able to conclude quickly
2 enough, you know, to have us take it later. I know it's
3 nearing 1 o'clock and we've been going for about -- close to an
4 hour and a half.

5 HEARING OFFICER POWELL: Okay. Do you think you'd be done
6 by 1:30 or do you think it'll go after that?

7 MS. MARKEY: I don't think much -- I think I have about
8 half an hour.

9 HEARING OFFICER POWELL: Okay. All right. Continue --
10 why don't we do this. Off the record.

11 (Paused at 12:56 p.m.; reconvened at 1:05 p.m.)

12 HEARING OFFICER POWELL: All right. Ms. Markey.

13 BY MS. MARKEY:

14 Q Scott, I'm going to share my screen with you and show
15 what's marked Starbucks Hopewell Exhibit 16. You had mentioned
16 before the break that there's a transfer request form that is
17 filled out for partners who want to transfer. Is this an
18 example of such a form?

19 A Yes, that is the form.

20 Q Are you involved at all with this form?

21 A Yeah, I am.

22 Q How so?

23 A I sign the signature for the sending district manager or
24 if I'm taking a transfer from another market, I'm the receiving
25 district manager signing down below.

1 Q And it says sending district manager's approval and then
2 receiving district manager's approval. Are those approvals
3 necessary for the transfer to be effectuated?

4 A Yes.

5 Q Have you ever not approved the transfer?

6 A No.

7 Q Have you ever approved a transfer?

8 A Yes.

9 MS. MARKEY: We'd like to move for the admission of
10 Employer 16.

11 MR. GAUDIOSO: That's a national form?

12 THE WITNESS: Yes, it is.

13 MR. GAUDIOSO: No objection.

14 HEARING OFFICER POWELL: So received.

15 (Employer's Exhibit No. 16 received)

16 BY MS. MARKEY:

17 Q Scott, when you testified earlier regarding I believe it
18 was discipline and your involvement in discipline, you
19 mentioned something called Virtual Coach, do you recall that?

20 A Yes.

21 Q And you had told us about something that's available on
22 the emplkoyer hub; is that accurate?

23 A The employee hub, yeah, the partner hub, yes.

24 Q And what is the partner hub?

25 A Sure. Partner hub is a web resource that any partner in

1 Starbucks can access. It houses -- it is tiered, depending on
2 like store manager, district manager, barista, but it has --
3 houses all of our documents, roles, routines. It has our
4 weekly update, any information, updates from the corporate
5 office around, happenings, changes in programs, it's all going
6 to be posted up there, the period planning kit that we spoke
7 about earlier would be posted up there.

8 Q When you testified earlier regarding you had period
9 planning meetings and then you also said you had partner
10 planning meetings; is that correct?

11 A Correct.

12 Q And with regard to the partner planning meetings, are
13 there any documents that you utilize in those partner planning
14 meetings or in preparation for them?

15 A Yes. There's an Excel -- we house our own Excel
16 spreadsheet that is a standardized -- at least in our area, I
17 wouldn't be able to speak across the country, but I know at
18 least in our area that we use.

19 Q And do you utilize that document?

20 A We do, yes. I do with my team, yes.

21 Q How do you utilize it, what kind of -- how do you utilize
22 it?

23 A The managers prior to the meeting, managers will go in and
24 update the document. They -- it has for shift supervisors,
25 barista trainers, it covers pretty much all of our different

1 levels, staffing needs, so they'll go in on a Monday or Tuesday
2 before our meeting, which generally happens a little bit later
3 in the week and then we'll discuss the document as a greater
4 group during our meeting.

5 Q And what discussion -- when you say discussions with
6 group, is that with the store managers?

7 A Yes, with the store managers.

8 Q And what do you discuss with the store managers regarding
9 that document that you create for the partner planning
10 meetings?

11 A It will depend on the tab. It could be staffing needs.
12 It could be at the barista level or the supervisor level. We
13 could look at another tab where we have baristas who are ready
14 to be shift supervisors, so then we look to pair them up.

15 So it's really going to depend, there's like multiple tabs
16 within that document.

17 MR. GAUDIOSO: I'm sorry, I may have missed it, but what's
18 that document called?

19 THE WITNESS: It's our period planning meeting document.

20 MR. GAUDIOSO: Oh, thanks.

21 THE WITNESS: It's like an Excel document that we use.

22 BY MS. MARKEY:

23 Q And when you say it's an Excel document that we use, is
24 that a -- who creates the Excel document?

25 A That document was originally given to me through my

1 partner resources manager, so I don't know if it was created by
2 Starbucks or not.

3 Q And is that Excel document that you utilize in addition to
4 the period planning document you said you received six or seven
5 times a year from corporate?

6 A Different meetings.

7 Q Ah. Now, I'm mixing up the meetings I was asking you to
8 clarify, so apologies.

9 With regard to the period planning meetings, those are the
10 ones where you receive the guide from Starbucks corporate six
11 or seven times a year; is that correct?

12 A Correct, seven times per year, yep.

13 Q Are there any other documents that you use with the
14 partner planning meetings other than this Excel that you
15 referenced?

16 A Partner planning, no, generally it's going to be just that
17 document.

18 MS. MARKEY: I have no further questions at this time.

19 HEARING OFFICER POWELL: Okay. All right. Well, why
20 don't we break now then. Why don't we break now. Mr. Witness,
21 why don't we break now and then come back at -- how much time
22 does everyone need?

23 MR. GAUDIOSO: I don't need very much time.

24 HEARING OFFICER POWELL: Okay. Half hour, would that
25 suffice, Ms. Markey?

1 MR. GAUDIOSO: Sure.

2 MS. MARKEY: Yes.

3 HEARING OFFICER POWELL: Okay. So all right, why don't we
4 make it 35 minutes, come back at 1:45 from break, from lunch,
5 all right?

6 MR. GAUDIOSO: Okay.

7 MS. MARKEY: Thank you.

8 HEARING OFFICER POWELL: All right. Thank you, everyone.

9 (Recessed at 1:12 p.m.; reconvened at 1:57 p.m.)

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A F T E R N O O N S E S S I O N

(1:57 P.M.)

HEARING OFFICER POWELL: All right. Mr. Gaudioso, cross-examination.

MR. GAUDIOSO: Yes, thank you, Mr. Powell.

CROSS-EXAMINATION

BY MR. GAUDIOSO:

Q Okay. So first I want to go to business, sir, I don't want to mispronounce your name, is it Thibedau?

A Thibedeau.

Q Thibedeau, I'm sorry.

A Yes.

Q Sorry for that. Okay. Mr. Thibedeau --

A You can call me Scott.

Q Okay. Scott, thank you. I don't mean to be that informal, but that's a whole lot easier, so I appreciate that.

Scott, my name is Dave Gaudioso, and you may most certainly call me, Dave, I am counsel for Workers United. I'm told I speak fast, that's something I've never burgeoned myself of in 28 years of doing this, so if I'm speaking too fast or if my question doesn't make sense to you, please just let me know and I will slow down and I will rephrase.

Okay. So, Scott, you testified that you have been a district manager for approximately five years; is that correct?

A That's correct.

1 Q Okay. So prior to that, you were a store manager?

2 A That is correct, yes.

3 Q How long were you a store manager?

4 A About seven years.

5 Q Seven years, okay.

6 A Yes.

7 Q Now, is it -- to the extent that you know, is the hiring
8 done in District 761 different than the hiring that's done in
9 the rest of the Starbucks world across the country?

10 A No, it should not be different.

11 Q Okay. And ot the extent that you know, is the way the
12 procedure for implementing discipline different in District 761
13 than it would be in any other part of the country?

14 A No, it should not be different.

15 Q How about same question with regard to the training of
16 baristas or shift supervisors?

17 A It should not be different, no.

18 Q Okay. How about the method by which promotions from
19 baristas to shift supervisors?

20 A That should not be different.

21 Q Okay. Same question with regard to the method by which
22 there are permanent transfers?

23 A It should not be different.

24 Q Same question with regard to how scheduling is done.

25 A Should not be different, standard.

1 Q Okay. Same with time tracking, payroll and staffing?

2 A That is correct.

3 Q Okay. With regard to the store manager approving time
4 off, should that be done essentially the same way in all
5 stores?

6 A Yes.

7 Q Okay. How about evaluating your partners, and when I say
8 partners, I'm going to limit it to baristas and shift
9 supervisors, should that be done essentially the same way
10 regardless of whether they're in District 761 or any place
11 else?

12 A Yes.

13 Q Okay. Resolution of grievances, complaints or things of
14 that nature should be done fairly the same?

15 A Yes.

16 Q Okay. Now, let me ask you, when you were a -- for those
17 seven years when you were a store manager, presumably you hired
18 any number of baristas, correct?

19 A That is correct, yes.

20 Q Okay. And when you would hire a barista, do you have the
21 authority to just hire that barista on the spot or did you have
22 to get authority from your district manager?

23 MS. MARKEY: I'm just going to object to this being
24 outside the scope of the direct examination. It was very clear
25 that he was only asked questions about his time as a district

1 manager and particularly the lack of relevance, to the extent
2 that his time as a store manager was more than five years ago.

3 MR. GAUDIOSO: Well, I think it would inform the reader of
4 the record as to the consistency of what store managers have
5 the authority to do. So I'm going to ask this question with
6 regard to Mr. Thibedeau's experience as a store manager and
7 then I will specifically ask the question with regard to what
8 he knows of Ms. Knight, who my understanding is the store
9 manager at the Hopewell store, if she does it any differently
10 than when he did it.

11 HEARING OFFICER POWELL: I'm going to overrule the
12 objection and allow the question. He does -- he was a store
13 manager and even as his role as district manager, he can
14 testify about what, you know, has been reported to him as far
15 as the hiring or anything like that. So I'm going to allow
16 that question.

17 THE WITNESS: Can you repeat the question?

18 BY MR. GAUDIOSO:

19 Q Sure. When you were a store manager, did you have the
20 authority to hire a barista on the spot or did you have to go
21 through your district manager?

22 A I had the ability to hire on the spot.

23 Q Okay. And does Ms. Knight have the authority to hire a
24 barista on the spot?

25 A Yes, she does.

1 Q Okay. And in terms of implementing discipline, when you
2 were a store manager did you have to check with your district
3 manager before you implemented some discipline upon a barista
4 or perhaps a shift supervisor?

5 A I did not always have to unless I needed a consultation.

6 Q But that would be your decision.

7 A Correct.

8 Q And does Ms. Knight have to consult with you with regard
9 to implementing discipline before she implements it?

10 A No, she doesn't.

11 Q Now, it's my understanding that the baristas are trained
12 by a barista trainer; is that correct?

13 A That is correct.

14 Q Okay. And that's someone in the individual store,
15 correct?

16 A Correct.

17 Q Okay. So a -- is it a correct statement to say if there's
18 a barista in the Hopewell store, it's another, say either
19 another barista trainer would be someone else working in the
20 Hopewell store?

21 A If that's where they were going to do their training, yes.

22 Q Okay. If they were hired to work in Hopewell, would they
23 do their training some place else?

24 A That does happen, yes.

25 Q How often does that happen?

1 A It depends. Like I'm doing it for my Mercer Mall store
2 like I stated earlier where they're understaffed, so they need
3 support, so the Hopewell store is training a barista that then
4 will go work in the Mercer Mall store.

5 Q Because the Mercer store can't support that sort of
6 activity right now; is that correct?

7 A Correct, that's correct, yes.

8 Q Okay. But in the ordinary course of things, would you
9 agree with me that a barista is going to be trained by a
10 barista trainer from their own store?

11 A Yes.

12 Q Okay. Would we call someone's own store, would the term
13 of the art be a home store?

14 A Yes, home store.

15 Q Okay. So the home store, that's the store that you were
16 hired at, correct?

17 A That is correct.

18 Q Okay. And if I was to apply for a barista job, as an
19 applicant, do I get to indicate what store I'd like to work in?

20 A You can apply for a specific store, yes.

21 Q Okay. And if the store manager in that store wants to
22 hire me, that store manager can, correct?

23 A That is correct.

24 Q Okay. So if another store manager would like to hire me,
25 but I want to be in say the Hopewell store and Ms. Knight says

1 nope, I'm going to hire him, that's the end of it, correct?

2 A That is correct, yes.

3 Q So let's talk about promotions for the moment. If someone
4 is going to be promoted in the first instance, that's something
5 that happens with regard to a decision made by the store
6 manager, correct?

7 A Promoted to shift supervisor, I'm sorry just to clarify?

8 Q I'm sorry, yes, I'm sorry, yes, from barista to shift
9 supervisor.

10 A That would be a decision a store manager will make, yes.

11 Q Okay. And then they'd have to check with you first,
12 correct?

13 A They usually will check in with me, yes. They'll just
14 alert me that they're promoting somebody, yes.

15 Q Well, I think if I'm not mistaken, you may have used the
16 word inform.

17 A Inform, yes, alert, inform, yes.

18 Q So -- but that's done after the fact, right, after the
19 promotion?

20 A No, like before, hey, I'm going to promote this person and
21 then they would process.

22 Q Okay. Have you ever told a store manager in Hopewell no,
23 you can't promote that person?

24 A No.

25 Q Okay. Have you ever told a store manager in any store in

1 your district, no, you can't promote a person that the store
2 manager wanted promoted?

3 A I have not.

4 Q Now, when you were discussing permanent transfers, it
5 sounded to me and correct me if I'm wrong, it sounded to me
6 that when you were talking about your involvement, you were
7 talking about transfers from one district -- from a store in
8 one district to store in another district.

9 A That is correct.

10 Q Okay. Let's just focus on the transfer from a store --
11 from one store in District 761 to another store. Isn't it true
12 that's generally just done between the two store managers?

13 A They'll let me know when they're transferring internally.

14 Q But do you ever say, no, you can't transfer that person
15 between stores?

16 A It has happened, yes.

17 Q On what occasion has it happened?

18 A When the partner is not performing and they have
19 corrective action on file, like final corrective action and
20 they're not in good standing with the company, that's one time
21 when we would not transfer a partner from one store to the
22 other.

23 Q So that is a specific time that it has happened?

24 A Correct.

25 Q Without one time that's happened?

1 A It's probably happened -- it has happened more than one
2 time. I couldn't give you a specific amount of times.

3 Q All right. So --

4 HEARING OFFICER POWELL: I'm sorry, Mr. Gaudioso --

5 MR. GAUDIOSO: That's okay.

6 HEARING OFFICER POWELL: -- as long as we're on this, so
7 if the partner does not have any type of I guess discipline or
8 anything like that, what happens then?

9 THE WITNESS: Oh, they would transfer to the other store,
10 we would approve --

11 HEARING OFFICER POWELL: Okay. And you're not involved in
12 that, that's just between the two store managers?

13 THE WITNESS: Yes, the two store managers would do it from
14 there, yes, they would just let me know that they're doing
15 that.

16 BY MR. GAUDIOSO:

17 Q And --

18 MR. GAUDIOSO: I'm sorry, Mr. Powell, do you have any
19 other questions?

20 HEARING OFFICER POWELL: No, I just wanted to -- go ahead,
21 I'm sorry.

22 BY MR. GAUDIOSO:

23 Q So when a permanent transfer like that happens, is that at
24 the instigation of the barista or supervisor?

25 A It could go either way, it could be a conversation, so

1 yes, the barista's supervisor could say, hey, I would like to
2 transfer. On the other end, we could be like, hey, we have an
3 opening in this store, would you be interested in going to that
4 store like when we're opening new stores, or like for instance,
5 that Mercer Mall location when we have an opening, so we would
6 talk to partners.

7 Q Okay. As the barista or shift supervisor, if they said,
8 no, I'm really not interested in going to another store, are
9 you going to force me?

10 A I would not, no.

11 Q Okay. Let's talk about scheduling for the moment. So
12 when scheduling is done, it's done for, my understanding it's
13 like a three week block of time.

14 A That's correct, yes.

15 Q Okay. And who prepares the schedule?

16 A The store manager does.

17 Q Okay. Does the store manager contact you and say, this is
18 who I'm going to schedule at any given time?

19 A No.

20 Q Okay. If someone calls out, they don't call you, right --

21 A They do not.

22 Q -- like if a barista calls out, they don't call you.

23 A They do not.

24 Q They call the store manager, correct?

25 A The store, they call the store and talk to whoever.

1 Q Okay. If someone wants to schedule a vacation, they'll
2 contact their store manager, correct?

3 A That is correct.

4 Q They're not going to contact you in the first instance,
5 correct?

6 A They are not.

7 Q Okay. And if someone has -- if someone's being evaluated
8 -- actually let me take a step back.

9 How often are your baristas evaluated?

10 A We --

11 MS. MARKEY: I'm just going to object because there's --
12 not only was it outside the scope, but there's no foundation
13 for that question.

14 MR. GAUDIOSO: I'll rephrase the question.

15 BY MR. GAUDIOSO:

16 Q Are baristas evaluated on their job performance?

17 A They have two performance development conversations with
18 their manager per year, to talk about their performance at the
19 store.

20 Q Do you sit in on those meetings?

21 A I do not.

22 Q Okay.

23 HEARING OFFICER POWELL: I'm sorry, once again, Mr.
24 Gaudioso. But you're asking specifically about baristas, does
25 that apply -- is there a different standard for the shift

1 supervisors, or is this just for all partners?

2 THE WITNESS: That's for all partners.

3 HEARING OFFICER POWELL: Okay. All right. Mr. Gaudioso,
4 I'm sorry about that.

5 MR. GAUDIOSO: No, I'm sorry, I should have asked that
6 follow-up.

7 BY MR. GAUDIOSO:

8 Q So if two partners in a store have an issue, are they
9 going to contact you or are they going to contact their store
10 manager with regard to resolving their issue?

11 A They would contact their store manager first.

12 Q And does the store manager have the authority to resolve
13 the issue or do they have to contact you to get guidance on how
14 to resolve the issue?

15 A They have the authority to resolve the issue.

16 Q Now, forgive me, Scott, the partner guide I don't have a
17 copy of, so I'm going to read something to you and then I'm
18 going to ask you a question about it.

19 A Sure.

20 Q It purports to be from the partner guide, if it doesn't
21 sound like the partner guide, please let me know. But it's a
22 job description for the store manager.

23 It says, the store manager is ultimately in charge of all
24 store operations and directs the work of the assistant store
25 managers, shift managers where applicable, shift supervisors

1 and baristas. The store manager is responsible for personnel
2 decisions, scheduling, payroll and fiscal decisions. The store
3 manager is considered full time and is generally scheduled to
4 work at least 40 hours each week.

5 Does that sound familiar?

6 A Yes.

7 Q Is that an accurate job description for the store manager?

8 A Yes.

9 Q Okay. Now, I believe you testified that on average you're
10 generally in the store, a District 761 store about one time a
11 month; is that correct?

12 A No, at minimum, like I would be in the store one time a
13 month, but that would be the least amount of times.

14 Q Is there an average?

15 A I've never done it, I couldn't tell you, it depends on
16 what's happening. It depends on what's happening.

17 Q Okay. But I believe you said you're at Hopewell more
18 often because of assistant store managers?

19 A More recently since October, yeah, late October.

20 Q Now, it's my understanding that the Hopewell store is a
21 training store; is that accurate?

22 A No, Misty is a store manager trainer. So that's
23 different. So Misty wasn't in Hopewell, if she was at a
24 different store, Hopewell wouldn't be training that manager.
25 It's the manager that's the trainer.

1 Q And specifically who is she training?

2 A Assistant store managers and managers in training.

3 Q Got you. So that's the reason that you're -- you may be
4 in Hopewell a little more often.

5 A Correct.

6 Q Okay. So let me ask you a little bit about, you mentioned
7 these district huddles that are weekly with store managers.

8 A Yes.

9 Q Is there anything equivalent to that that you would have
10 with shift supervisors?

11 A Weekly, no.

12 Q Okay. How about monthly?

13 A Not a meeting like that, no.

14 Q Okay. Where do these district huddles take place?

15 A We do them on Teams, so similar to Zoom.

16 Q Okay. So the store manager would presumably be in his or
17 her store?

18 A Correct.

19 Q Okay. And are there weekly meetings that store managers
20 have with their shift supervisors and baristas?

21 A There's not like a weekly set meeting, no.

22 Q Okay. You had testified with regard to -- let me make
23 sure I have the terminology correct, the Play Builder App.

24 A Correct.

25 Q Okay. So that's something on an iPad that can be used to

1 direct who's going to do what job?

2 A Correct, yep.

3 Q Okay. Now, correct me if I'm wrong, it's not like who's
4 ever using it plugs in a bunch of names of employees in the
5 store and the app decides who's going to fill the spot, right?

6 A No, no, no.

7 Q Okay. So whoever's utilizing it, whoever is the -- I
8 think you used the word key holder?

9 A Key holder, yep, shift leader.

10 Q Shift leader, could be the shift supervisor?

11 A It would be a shift supervisor or a store manager.

12 Q Okay. So whoever is using it, either the shift supervisor
13 or the store manager, they can use their knowledge of their
14 individual employees to make that decision as well, correct?
15 Like if somebody has more -- is better in terms of customer
16 interaction, you may direct that person in a more visible
17 position; is that correct?

18 A Yes, that's correct.

19 Q Okay. And to that extent, the Play Builder doesn't care,
20 right, I mean, it's not like you get a notice that Play Builder
21 is being not used or the key holder has the authority to make
22 those determinations, correct?

23 A Where the people go within the play that is correct, yes.

24 Q Okay. With regard to the geography of District 761, do
25 you have any sense of how by mileage, how big District 761 is?

1 A I don't. Honestly I couldn't tell you from a mileage
2 perspective.

3 Q Okay. But it encounters -- I'm sorry, it encompasses all
4 of Mercer County?

5 A So, yes, every Starbucks in Mercer County is District 761
6 -- oh, that's wrong, I'm sorry. The Trenton location is not in
7 my district.

8 Q Okay. Just the Trenton location?

9 A Just the Trenton location, yes.

10 Q Okay. I'm assuming there's more than one Starbucks in
11 Trenton?

12 A In Trenton, no, there's only one.

13 Q Oh, really, okay.

14 A Yes.

15 Q Pretty big around here, I figured they're always here.

16 HEARING OFFICER POWELL: Hold on a second. Did you say
17 the City of Trenton only has one Starbucks?

18 THE WITNESS: That is correct, yes.

19 MR. GAUDIOSO: It came as a shock to me as well, Mr.
20 Powell.

21 HEARING OFFICER POWELL: Okay. All right. Thank you.

22 BY MR. GAUDIOSO:

23 Q So -- and I'm sorry, your earlier testimony I think you
24 indicated that there's some other geography that District 761
25 also encompasses?

1 A Yes. I have one store in Middlesex, one in Burlington,
2 and one in Somerset County, and all kind of go up against the
3 border of Mercer County.

4 Q Okay. So kind of -- you don't gerrymander them, they're
5 pretty much close to the border of Mercer.

6 A That's correct, yes.

7 Q Okay. Let me ask you a few follow-up questions with
8 regard to the partner planning meetings.

9 A Sure.

10 Q Where are those held?

11 A Generally now virtually. We used to hold them in person
12 at one of our stores.

13 Q Okay. So would it be one particular store when you had
14 them in person or --

15 A Yeah. Our Lawrenceville location.

16 Q Is there a reason it was Lawrenceville store?

17 A Yeah, there's -- in the basement, there's a conference
18 room in the basement that is private.

19 Q Okay. And those are attended just by store managers?

20 A Correct.

21 Q Okay. And your period planning meetings, where are those
22 located?

23 A Same exact thing, it's virtually but we used to do them in
24 Lawrenceville when we were meeting in person.

25 Q And again, just the store managers?

1 A Yes.

2 Q Okay. Now, I wrote this down because it struck me. When
3 you were talking about the period planning guide, there was --
4 you said as part of what's written on it, so leaders can
5 prioritize and plan.

6 A Yep.

7 Q Do you recall that?

8 A Yep.

9 Q Okay. So presumably if this is just being attended by the
10 district manager, yourself and the store managers, that's who
11 you're defining as the leaders.

12 A Correct.

13 Q Okay. Now, you mentioned that you might help out with
14 interviews at job fairs.

15 A Yeah, if we have a bigger job fair, I'll interview barista
16 candidates. If we're hiring for the entire district versus
17 just a specific store, I'll help in and interview.

18 Q How often does that happen?

19 A In the last year, we've done it twice. Twice I've done it
20 last year.

21 Q Twice?

22 A Yeah, yeah, where I've been involved.

23 Q Okay. So you've actively participated in interviewing
24 twice in the past year?

25 A Yeah.

1 Q Okay. Scott, are all the hours for all the stores in
2 District 761 the same?

3 A They are not currently, no.

4 Q Okay. When you open a new store and I believe you said
5 you fill those stores with new hires and with existing hires --
6 existing staff from other stores, correct?

7 A That is correct, yes.

8 Q And I'm assuming if it's in District 761, the existing
9 employees are also from -- I'm sorry, existing partners are
10 also from 761.

11 A Yes. So I would use the partners to transfer would
12 generally be from 761 going into the new store.

13 Q Okay. Do those partners that are transferring into that
14 new store, do they have the option to go back to their home
15 stores?

16 A If they put in a transfer request with their manager, I
17 don't see why not.

18 Q Are they required to go to this newly set up store?

19 A No, no. Like I stated earlier, we generally will post a
20 flyer in the back of house.

21 Q Got you. When a partner can't make it in to work or for a
22 shift for some reason, in the first instance, might they
23 contact another partner to see if they can cover that shift?

24 A Absolutely, yes.

25 Q I mean, that would be your expectation and experience?

1 A Yes.

2 Q Okay. And that's done outside of the purview of certainly
3 you, right?

4 A Correct.

5 Q And they would simply notify the store manager, hey, I
6 can't make it today, so and so is going to cover for me.

7 A Correct.

8 Q Okay. But that's all done in the store?

9 A Correct, sometimes they'll go outside the store and find
10 coverage from another store.

11 Q Okay. That's if they can't find someone within the home
12 store.

13 A Correct.

14 Q Okay. But whoever coming in, volunteered to come in,
15 right?

16 A That would be correct, yes.

17 Q Okay.

18 MR. GAUDIOSO: Mr. Powell, if you can just give me maybe
19 two minutes I may be done.

20 HEARING OFFICER POWELL: Do you want to go off the record
21 for a couple of minutes?

22 MR. GAUDIOSO: Yeah, just off the record for maybe two
23 minutes.

24 HEARING OFFICER POWELL: Okay. All right. Off the
25 record, two minutes.

1 (Paused at 2:26 p.m.; reconvened at 2:28 p.m.)

2 HEARING OFFICER POWELL: All right. Mr. Gaudioso, you
3 were saying?

4 MR. GAUDIOSO: Yes. Thank you, Mr. Thibedeau and subject
5 to any possible recross if Ms. Markey has redirect, I have no
6 further questions at this time.

7 HEARING OFFICER POWELL: Okay. All right. I just have a
8 couple of questions myself for you, Mr. Thibedeau.

9 During your examinations, you say that you've met with
10 store managers monthly I believe during these planning
11 meetings.

12 THE WITNESS: Partner planning meetings would be monthly,
13 correct, yeah.

14 HEARING OFFICER POWELL: Okay. Do you ever meet with --
15 is there any times that the partners themselves, do you meet
16 with them, or as a whole across the district?

17 THE WITNESS: Not with the entire district, but I'll do
18 round tables with entire store teams.

19 HEARING OFFICER POWELL: Okay. So individual store teams.

20 THE WITNESS: Teams, yeah, yeah, I'll do round tables with
21 them, yes.

22 HEARING OFFICER POWELL: All right. I lost my notes.
23 Okay. Actually some of these Mr. Gaudioso covered some of
24 these, so. I'm just going back through --

25 MR. GAUDIOSO: Mr. Powell, while you're looking that up,

1 based on the question you just asked, may I ask the witness a
2 follow-up question?

3 HEARING OFFICER POWELL: If you can hold on, I'd like Ms.
4 Markey to go first --

5 MR. GAUDIOSO: Oh, I'm sorry.

6 HEARING OFFICER POWELL: -- then you can go.

7 Oh, yes, there is one. You said when you're opening the
8 new store and I think you said it was the Mercer Mall stores
9 opening.

10 THE WITNESS: No, Montgomery.

11 HEARING OFFICER POWELL: Oh, I'm sorry, Montgomery I had
12 that wrong. You said you took from some specific stores for
13 Montgomery.

14 THE WITNESS: Will be taking from specific stores.

15 HEARING OFFICER POWELL: Okay. Why those particular
16 stores, was it because they're closer geographically or is it
17 for some other reason?

18 THE WITNESS: No, geographic, closeness to the store, so
19 the partners would live in close proximity to that store, so it
20 makes easier to commute.

21 HEARING OFFICER POWELL: Okay. All right. Okay. I think
22 that's it. Ms. Markey.

23 MS. MARKEY: I have a few.

24 HEARING OFFICER POWELL: Okay.

25 REDIRECT EXAMINATION

1 BY MS. MARKEY:

2 Q You were asked some questions on cross-examination, Scott,
3 about the need for partner resources and if there's, I think it
4 was an unspecified issue, that they have to deal with it, that
5 should be the same across the country, do you recall that?

6 A Yes.

7 Q You also testified earlier that you work in your district
8 for your district stores primarily or currently with Tina
9 McDonald, that's your partner resources person, correct?

10 A She is, yes.

11 Q And when you consult with Ms. McDonald there's some level
12 of discretion that she's giving when she gives you advice,
13 correct?

14 A Correct.

15 Q And have you ever worked with anyone else in partner
16 resources as district manager?

17 A Oh, sure, yeah. There's a whole department that I would
18 work with, so it could be multiple partners from partner
19 resources.

20 Q And does that advice vary upon, in any way, depending on
21 who you're talking with in partner resources?

22 A I couldn't answer that directly, I don't --

23 Q Yeah, if you don't know, you don't know.

24 A Yeah, I don't know.

25 Q You also had some questions regarding whether or not store

1 managers were authorized to issue discipline on their own, do
2 you recall that?

3 A Yes.

4 Q Are there certain levels of disciplines where managers are
5 expected to consult with you about?

6 A Yeah, absolutely. I think there is a certain level.

7 Q And what level is that?

8 A I would say anything above like dress code or time and
9 attendance, if we're talking about like partners verbally
10 altercating in the store, I would want to -- I would want them
11 and expect them to speak with me about it, so that I know and
12 I'm aware, and we can consult and figure out what we want to
13 do.

14 Q What are -- do you recall or know what the levels
15 generally of corrective action are?

16 A Yeah, it's verbal, written, it's -- or documented coaching
17 and it would be written and then final corrective action.

18 Q Do you expect your store managers to consult with you
19 before issuing a final written warning?

20 A Yes, we would have a conversation around that. They would
21 let me know, they would make me aware, especially if they're
22 putting somebody on a final corrective action or on -- even if
23 it was time and attendance, they would just let me know.

24 Q Do you expect them to consult with you before making any
25 kind of determination?

1 A Yeah, they would let me know.

2 Q Do they talk with you before making the decision to
3 terminate, do you expect them to do that?

4 A Yes, we have a conversation.

5 Q You testified earlier and I believe had some questions on
6 cross-examination regarding partner relations and virtual
7 coach. You testified that you called virtual coach yourself,
8 right?

9 A I've used it, yes.

10 Q And why were you using it and not the store manager in
11 that instance?

12 A Oh, because we were both -- we were on the phone and we
13 were talking through it, so we were going through it together
14 because I couldn't remember what was going, so they were on
15 their end going through it, and I was going through it on my
16 end just having a conversation.

17 Q You testified earlier and on cross-examination about the
18 partner planning meetings that you have and that you discussed
19 staffing, I believe you said staffing across stores in your
20 district on cross examination; is that correct?

21 A During our partner planning meeting, yes.

22 Q And when you say that you discuss staffing across stores
23 at those partner planning meetings, what is it that you discuss
24 particularly in that regard?

25 A Sure, just staffing level of stores and what support we

1 can give and seeing if somebody has somebody that might be
2 available or willing to make that transfer to go support a
3 store.

4 Q Are you involved in soliciting partners to transfer into
5 stores where you have a staffing need?

6 A I've spoken to partners, sure, and partners have spoken to
7 me about transfers, yes.

8 Q And in addition to transfers or separately from transfers,
9 have you talked to partners about a need, and I guess I'll ask
10 a better question. When you say transfers, are you talking
11 about permanent transfers or covering a shift?

12 A Permanent transfers.

13 Q With regard to covering shifts, are you involved, if
14 there's a need to cover shifts, on more than a one shift basis,
15 you had asked about on cross-examination when a store closes or
16 some of the things that happen when stores were asked about
17 from Mr. Powell.

18 When there's a need for, not a permanent transfer, but not
19 a one shift coverage, are you involved in those conversations
20 with getting partners and working to get partners to cover if
21 you needed shifts?

22 A Oh, sure, I've done that to help support my manager to
23 work through multiple partners and faster.

24 Q And who are you working through or talking to when you do
25 that?

1 A Well, I'll talk to the manager, we'll divide the list up
2 and I'll call the partner directly if I have to about it.

3 Q And is that just partners in the store that's affected or
4 is partners across the district?

5 A Well, I would be talking to the partners in the store
6 affected to see if they would go to another store.

7 Q You testified on cross-examination that store managers can
8 effectuate transfers between store managers; is that correct?

9 A Inside the district, yes, they'll let me know the person
10 is transferring, but they'll do it within the district, yes.

11 Q You have to sign the approval form for those transfers,
12 though, don't you?

13 A We haven't always, no. Internally, we'll just transfer
14 from one store to the next store.

15 Q So with the transfer form that we looked at before on
16 direct examination, was that only applicable to district to
17 district transfers?

18 A That's what we utilize, that's correct.

19 Q And with regard to transfers permanently within the
20 district, are you consulted on those?

21 A Yes.

22 Q Have you ever sat in on one of the twice annual
23 performance development conversations that you testified about
24 on cross-examination?

25 A I have sat on them, yes.

1 Q How often have you sat in on them?

2 A Plenty of times over the years, it just depends if I'm
3 trying to help a newer manager support them in their
4 development, so I couldn't give you an exact number.

5 Q And has store managers ever discussed the performance
6 development conversations with you before they've had them with
7 the partner?

8 A I mean, yes, they've talked about partners and partner
9 planning as we're going into those conversations, sure.

10 Q You testified on cross-examination about finding coverage
11 outside of the store. Partners -- do partners pick up hours
12 outside of their home stores on a regular basis in your
13 district?

14 A Sure, yeah, they'll pick up hours if they want more hours,
15 yeah, they'll go to other stores and work.

16 Q Are there partners who aren't able to get their requested
17 number of hours only working in their home store?

18 A That does happen, yes.

19 MS. MARKEY: No further questions.

20 MR. GAUDIOSO: Just a few follow-up. I'm sorry, Mr.
21 Powell, do you have any questions?

22 HEARING OFFICER POWELL: No. If I do, it'll be after you,
23 Mr. Gaudio.

24 RECROSS-EXAMINATION

25 BY MR. GAUDIOSO:

1 Q Scott, there's round tables you mentioned, how often do
2 they occur?

3 A It depends. But I usually try to do let's say maybe a
4 month, but I'll do more. Like right now, I'm doing a little
5 bit more, I'm trying to work on some different things right now
6 with my team.

7 Q So wait a minute, I just want to make sure we're talking
8 about the same thing.

9 A Sure.

10 Q You said the round table with the partners in a store.

11 A Oh, in a store. Yeah, okay, I would do -- I don't really
12 have a set cadence for that to be honest, like I couldn't tell
13 you.

14 Q Do you remember the last time you did one of those in
15 Hopewell?

16 A I have not recently, no.

17 Q Okay. And you testified on redirect that you've assisted
18 in making calls to partners to help divide up and facilitate
19 staffing, correct?

20 A Yeah, absolutely.

21 Q Same thing applies, though, right, if a partner doesn't
22 want to go, they don't have to go, right?

23 A Yeah, the same thing applies to me, just because I'm
24 calling them, they don't have to go.

25 Q Okay. How often have you overturned a store manager's

1 determination with regard to the level of discipline to be
2 imposed on someone?

3 A I really do not.

4 Q Okay.

5 MR. GAUDIOSO: That's all, thank you.

6 HEARING OFFICER POWELL: All right. I just have one, just
7 for clarification, Mr. Thibedeau.

8 When you said that the partners within the district, if
9 they want to pick up hours, they can go to other stores.

10 THE WITNESS: Yeah, they can pick up a shift in another
11 store.

12 HEARING OFFICER POWELL: Okay. And that's voluntarily
13 done, correct, that's something at the partner's discretion?

14 THE WITNESS: Oh, yes, absolutely, yes.

15 HEARING OFFICER POWELL: Okay. Are there ever any times
16 when they're ordered to do that?

17 THE WITNESS: We don't, we don't order to go work at
18 another store.

19 HEARING OFFICER POWELL: All right. Even -- okay. Even
20 if though that other store needs a worker or something or a
21 partner or something like that, it's all voluntarily?

22 THE WITNESS: It's all voluntary, yep.

23 HEARING OFFICER POWELL: All right. I have nothing
24 further.

25 All right. Okay. If that's it, then thank you, Mr.

1 Thibedeau, thank you for your patience this morning and for
2 your cooperation and everything this afternoon. If there's
3 nothing further, you may step down.

4 THE WITNESS: Okay.

5 HEARING OFFICER POWELL: All right. Ms. Markey, do you
6 have another witness?

7 MS. MARKEY: We do. Ms. Duarte is going to take the next
8 witness.

9 HEARING OFFICER POWELL: Okay. Before we start that, Ms.
10 Markey, I want to ask you, the documents that you presented
11 earlier and the documents that you intend to present in the
12 future, they are -- are they identical to the ones that were
13 presented to -- in the other R cases, the exact same type of
14 documents, correct, except the hours may be different because
15 it involves this particular store; is that correct?

16 MS. MARKEY: No, we've pulled those from utilized by the
17 witnesses who testified. So while there are certain ones, like
18 the partner guide that we were discussing earlier and was
19 consistent with some of the testimony which did from both sides
20 go into where they originate from and who creates them, but to
21 the extent they're identical, I can't represent that with
22 regard to all the exhibits.

23 And I know that there are some particularly that are not
24 to the extent that they were pulled by this district.

25 HEARING OFFICER POWELL: Okay. All right. So who -- call

1 your next witness, Ms. Markey -- Ms. Duarte, she's going to
2 take the next witness you said.

3 MS. DUARTE: That's correct.

4 HEARING OFFICER POWELL: Okay. If you can call your
5 witness please.

6 MS. DUARTE: I would like to call to the stand Abby
7 Turner.

8 HEARING OFFICER POWELL: All right. Ms. Turner.

9 MS. TURNER: Hi.

10 HEARING OFFICER POWELL: Okay. If you can raise your
11 right hand please.

12 ABBY TURNER, WITNESS, SWORN

13 HEARING OFFICER POWELL: Okay. All right. Could you
14 state your name and spell your last name please.

15 THE WITNESS: Yes, Abby Turner, T-U-R-N-E-R.

16 HEARING OFFICER POWELL: All right. Ms. Duarte.

17 MS. DUARTE: Thank you, Mr. Powell, and just before we
18 start, this morning we circulated a proposed stipulation
19 between the parties that reference Employer Exhibits A, B, and
20 C, Employer 20-A, 20-B and 20-C. We'd like to move to admit
21 those exhibits and we'll be referencing them through the next
22 direct examination.

23 HEARING OFFICER POWELL: All right. Mr. Gaudioso, did you
24 get that document?

25 MR. GAUDIOSO: Yes.

1 HEARING OFFICER POWELL: All right. Do you have any
2 objections to those documents?

3 MR. GAUDIOSO: No.

4 HEARING OFFICER POWELL: Okay. Off the record for a
5 second.

6 (Pause)

7 HEARING OFFICER POWELL: All right. In an off the record
8 discussion between the parties a stipulation which shall be put
9 in as Exhibit -- Board Exhibit No. 8, and a stipulation for the
10 admissibility of documents that's going to be referenced with
11 this examination. The employer and petitioner have agreed and
12 stipulated -- have agreed to the stipulation, so I'm now going
13 to accept that stipulation and receive it into evidence as
14 Board Exhibit No. 8.

15 All right. Go ahead, Ms. Duarte.

16 (Board's Exhibit No. 8 received)

17 MS. DUARTE: Thank you, Mr. Powell, and just to confirm
18 we'd also like to move to enter into the record Exhibits 20-A,
19 20-B and 20-C.

20 HEARING OFFICER POWELL: Pursuant to that stipulation,
21 those records are now received.

22 (Employer's Exhibit Nos. 20-A, B and C received)

23 MS. DUARTE: Thank you, Mr. Powell.

24 DIRECT EXAMINATION

25 BY MS. DUARTE:

1 Q Good morning, Ms. Turner.

2 A Good morning.

3 Q Where are you currently employed?

4 A I work for Charles River Associates.

5 Q And what is Charles River Associates?

6 A We're an economic litigation consulting firm. We do
7 economic analysis for litigation.

8 Q And how long have you worked for Charles River Associates?

9 A Eight years.

10 Q And what is your current job title?

11 A Principal.

12 Q And how long have you held that position?

13 A Three years.

14 HEARING OFFICER POWELL: I'm sorry, could you repeat that,
15 I didn't hear that?

16 THE WITNESS: Three years.

17 HEARING OFFICER POWELL: Okay. Thank you.

18 Q And what are your job duties as principal at Charles River
19 Associates?

20 A I interact with clients, bring in business and analyze
21 data for clients to meet their needs as they're pursuing
22 litigation or outside of litigation and consulting matters.

23 Q And, Ms. Turner, what is your educational background?

24 HEARING OFFICER POWELL: Ms. Duarte, if I may, if I just
25 may for a second. You're -- is this a person that -- Mr.

1 Gaudioso, I'll skip right to it, are you challenging this
2 person's expertise at all?

3 MR. GAUDIOSO: No.

4 MS. DUARTE: With that, Mr. Powell, we'd stipulated to the
5 fact that --

6 HEARING OFFICER POWELL: Right.

7 MS. DUARTE: -- that Ms. Turner had been recognized --

8 MR. GAUDIOSO: Right, so we can --

9 MS. DUARTE: -- as an expert in prior proceedings.

10 HEARING OFFICER POWELL: Yes, so in that regard, Ms.
11 Duarte, I think you could just get into the meat of the -- you
12 don't have to ask her about her qualifications.

13 MS. DUARTE: No problem.

14 HEARING OFFICER POWELL: Okay.

15 BY MS. DUARTE:

16 Q Ms. Turner, what is your understanding of why you were
17 retained in this case?

18 A We were asked to analyze the inter -- the employee
19 interchange data within District 761 and come up with a set of
20 infographics that describe the interchange within the district.

21 Q And as part of your work in this case, did you prepare a
22 report?

23 A I did.

24 Q What documents or information did you review in order to
25 prepare your report?

1 A We reviewed the aggregated data and the partner listing
2 and the store listing for District 761.

3 Q Are these the only documents that you relied on when
4 preparing your report?

5 A Yes.

6 MS. DUARTE: I'd note for the record that those three
7 documents that she just mentioned have been received into
8 evidence as Employer's Exhibits 20-A, B and C.

9 I will also note for the record that I will refer to these
10 documents as data sets throughout Ms. Turner's examination.

11 HEARING OFFICER POWELL: Sure.

12 Q Ms. Turner, I would like to ask some questions about the
13 data sets you reviewed. What stores are covered in the data
14 set you issued?

15 A There are 14 stores covered in the data set that we
16 received that my understanding is that they were in District
17 761 at some point during the period covered by the data.

18 Q And what period is covered by the data?

19 A April 29th, 2019 through January 9th, 2022.

20 MR. GAUDIOSO: Excuse me, Mr. Powell, I hate to interrupt,
21 based upon the prior witness' testimony I don't think he
22 testified that there were 14 stores in District 761.

23 HEARING OFFICER POWELL: He testified that there were 12.

24 MS. DUARTE: If I can expand on that, I can ask follow-up
25 questions with this witness, I think we are of that distinction

1 because we're covering the period of 2019 through 2022. There
2 were some stores within that time period that closed and others
3 that were reallocated to a different district.

4 And so when you pull data fed for this district for 2019
5 through 2022, it includes 14 instead of those 12 stores.

6 HEARING OFFICER POWELL: All right.

7 MR. GAUDIOSO: I'm still at a loss for this, Mr. Powell.

8 HEARING OFFICER POWELL: I think what we need to do first,
9 I mean, I'd like to find out first then with that in mind, the
10 testimony is that there's been 12 stores and there's two
11 additional stores, I think --

12 MR. GAUDIOSO: I just want to see the numbers.

13 HEARING OFFICER POWELL: Yeah, to me that's --

14 MS. DUARTE: Mr. Powell, we've accounted for that factor,
15 and in fact, it's one of the analysis that you'll see as part
16 of Ms. Turner's presentation. There was no way to exclude
17 these stores because during the time period they were a part of
18 the district, so we couldn't exclude them completely or present
19 a cut of the data that would include the 14 stores, and we'll
20 also present a part of the data that excludes those two stores.

21 MS. MARKEY: I also want to be clear to the extent that --
22 and I'll let Ms. Duarte handle this, but to the extent there
23 was a reference to I believe Scott's testimony earlier, the
24 only testimony about 12 stores was that there's currently 12
25 stores in the district.

1 MR. GAUDIOSO: First, Mr. Powell, we're all ganged up
2 here, can we have one attorney with the witness.

3 HEARING OFFICER POWELL: Well, I -- yeah, no, no, I
4 understand, Mr. Gaudio. Ms. Duarte is handling the
5 representation but we --

6 MR. GAUDIOSO: My --

7 HEARING OFFICER POWELL: -- are a little more relaxed here
8 so I understand Ms. Markey's point but, Ms. Markey, with that
9 in mind, yeah. I --

10 MR. GAUDIOSO: But I don't have a specific objection.

11 HEARING OFFICER POWELL: Yeah, no, I'm getting to that,
12 Mr. Gaudio.

13 MR. GAUDIOSO: Okay.

14 HEARING OFFICER POWELL: The objection to this witness'
15 testimony is that basically the -- we were told -- or based on
16 the prior testimony was 12 stores. You know this is what I'm
17 going to do. Ms. Duarte, if you can hold on one second. Mr.
18 Gaudio, I'm going to allow you to voir dire this witness on
19 that particular issue.

20 MR. GAUDIOSO: Before I can even voir dire on that
21 particular issue, regardless of what the witness is going to
22 tell us, I still have the basic objection. We have a petition
23 that's filed at a certain point in time. We have a vote that's
24 going to happen at a specific point in time. It's either going
25 to involve 12 stores -- well, it's not either, it's going to

1 involve 12 stores.

2 The testimony is clear, there's 12 stores in the district.
3 Now, Ms. Duarte has made an indication that they can cut out
4 this other period that accounts for these other two stores, I
5 don't why we have any testimony then with regard to 14 stores.

6 There's going to be an inherent bias and an inherent
7 inference based upon stores that are no longer in the district,
8 and if, if you decided, or the Region decides that it should be
9 a district-wide vote, it's not a district of 14 stores, it's a
10 district of 12 stores.

11 So any testimony particularly testimony that's supposed to
12 be expert testimony with regard to inferences that you are
13 supposed to make is inherently unreliable. So before we can
14 even do any sort of voir dire, we have to address the very
15 obvious issue sitting right before us.

16 This is flawed analysis because it's incorporating stores
17 that aren't in the district right now, that if you had a
18 decision and direction of election saying it's going to be all
19 12 stores, it's all 12 stores. How, how are we having 14
20 stores in the analysis?

21 HEARING OFFICER POWELL: All right.

22 MS. DUARTE: Mr. Powell, may I be heard?

23 HEARING OFFICER POWELL: Well, let me ask you this first,
24 Ms. Duarte. I think you did say, I heard you correctly and Mr.
25 Gaudiose seems to think the same thing, you said that there was

1 an analysis done with 14 stores, and then one done with 12
2 stores, correct?

3 MS. DUARTE: Mr. Powell, that's correct, but I'd like to
4 address Mr. Gaudio's comments on the hearing. In this case,
5 there's already been testimony that stores open and close all
6 the time within the district. That's testimony that has
7 already been admitted through the first witness.

8 What this first data set shows, and by first data set I
9 mean the first seven graphs that we'll go over in this
10 presentation that have 49 graphs. So what does that look like
11 for the time period of 2019 through 2022. And during that time
12 period in this district, during different times, there was 14
13 stores. And that's what that first cut of data, meaning the
14 seven, the seven charges that we'll go over we'll show.

15 From there, we also conduct biocese (ph) analysis, where
16 we take out any stores that opened or closed or were realigned
17 during the relevant time period. So the most reliable data as
18 Mr. Gaudio argues is already included in this presentation
19 and Ms. Turner is prepared to testify on it.

20 So to completely disqualify the testimony that this
21 witness is going to present would be completely prejudicial to
22 the employer where we've anticipated this argument and prepared
23 testimony and record evidence to be submitted on this issue.

24 HEARING OFFICER POWELL: Okay. I'm not going to disregard
25 her testimony, that was never an issue. The issue was, as I

1 see it, you have -- if you have information regarding the 12
2 stores, why do we need the information about the 14 stores?
3 That seems to me what skews -- it would skew the analysis.

4 So if you have information that just involves the 12
5 stores, you've done a bias analysis that takes into account,
6 then let's just hear about that and I don't think anybody would
7 have a problem.

8 MS. DUARTE: And, Mr. Powell, if I had been permitted to
9 continue with the presentation, that's exactly what we would
10 have done. We would have presented the complete picture for
11 what this district looked like during the relevant time period
12 and we then would've submitted evidence that calculated the
13 bias out of the equation.

14 And so I would ask that you allow us to continue with the
15 presentation, and we will get to this issue within the facts.

16 HEARING OFFICER POWELL: No, no. I -- I'm -- if it's
17 going to skew the evidence with the 14 stores, then that's not
18 relevant to our -- that's not good for the reader of the record
19 to know that. I just want the information regarding the 12
20 stores that are at issue now. I don't think we need to have
21 any of the information about the 14 stores. I just don't see
22 how that would --

23 MS. DUARTE: Mr. Powell, and I will note that this issue
24 has been litigated in a number of other regions. And the issue
25 that has come up with this data is that it did not include the

1 data of the stores that had either been previously closed or
2 they had been realigned into another district.

3 And so we've done a comprehensive analysis which includes
4 those data points precisely because it was raised in prior
5 hearings.

6 HEARING OFFICER POWELL: All right. Off the record for a
7 second.

8 (Paused at 2:58 p.m.; reconvened at 3:18 p.m.)

9 HEARING OFFICER POWELL: Okay. Ms. Duarte, you'd like --
10 if you can make an offer of proof as to the 14 stores,
11 information regarding 14 stores.

12 MS. DUARTE: Thank you, Mr. Powell. So there's been
13 testimony at this hearing that during the relevant time period,
14 that being April of 2019 through January 9th of 2022 stores
15 within the district will some time close. We would prefer to
16 put into evidence interchange data for the 14 stores, which
17 will include the stores that one, which was closed during the
18 relevant time period, and the second which was realigned into a
19 different district during the relevant time period. And that
20 will give the Hearing Officer and the reader of the record a
21 complete data set with regards to the history of this
22 particular district.

23 If the Hearing Officer will not allow us to proceed on the
24 basis of including these 14 stores, we are prepared to submit a
25 replacement exhibit that only looks at the 12 stores that are

1 currently in the district, but it would not include those
2 stores that were either closed or realigned during the relevant
3 time period.

4 HEARING OFFICER POWELL: And the information that the 14
5 stores would show, can you summarize what that would be in your
6 offer of proof?

7 MS. DUARTE: Yes. So if we looked at the 14 stores, it
8 would be a complete view of the history of this particular
9 district and the interchange that occurred within this
10 particular district. The evidence will show that during the
11 relevant time period there were two stores that were a part of
12 this district and which regularly exchanged employees with
13 other stores within this district.

14 HEARING OFFICER POWELL: Okay. All right. Okay. And --
15 okay, go ahead. You may continue. Mr. Gaudioso?

16 MR. GAUDIOSO: Yes.

17 HEARING OFFICER POWELL: All right. She's made her offer
18 of proof, she's now -- I understand she's now prepared to put
19 in a secondary -- another document regarding just the 12 stores
20 and what that -- and her testimony -- the testimony will focus
21 on the 12 stores; is that correct, Ms. Duarte?

22 MS. DUARTE: If the Hearing Officer will not permit us to
23 proceed on the 14 stores, we will submit a replacement exhibit,
24 that's correct.

25 HEARING OFFICER POWELL: All right. Let me ask you this,

1 is it one exhibit on the 14 stores?

2 MS. DUARTE: No, it's two exhibits.

3 HEARING OFFICER POWELL: Could you summarize in an offer
4 of proof, I'm sorry, what those exhibits would say and what
5 your witness would testify to about those two exhibits,
6 specifically?

7 MS. DUARTE: Yes. With regards to the 14 stores, this
8 witness would provide testimony and evidence about the degree
9 of interchange within stores in the district, as it existed
10 between April of 2019 and January of 2022.

11 So it would show what days of the week there was
12 interchange occurring, within which stores there was
13 interchange occurring, the percentage of partners that were
14 borrowed, or linked to other stores within this district for
15 the relevant time period. And that's what this data would
16 show.

17 HEARING OFFICER POWELL: All right. Off the record.

18 (Paused at 3:21 p.m.; reconvened at 3:26 p.m.)

19 HEARING OFFICER POWELL: All right. So, Ms. Duarte, you
20 made an offer of proof as to the 14 stores. Could you continue
21 that offer of proof and state what the 14 stores, the evidence
22 or the record will show of the 14 stores briefly and what the
23 differences between what the evidence will show on the 14
24 stores and what the evidence will show on the 12 stores.

25 MS. DUARTE: Mr. Powell, the evidence on the stores,

1 regardless of whether it's 12 or 14 will show that there is a
2 significant amount of interchange between partners that work
3 within this district and that was true in 2019 and it's true
4 through the present.

5 What these graphs will show and broken down by year and by
6 store, is the amount of interchange that was occurring at these
7 individual stores and in the market collectively as a whole.
8 And so when we look at the 14 stores, we're looking at every
9 store that was within this district for the relevant time
10 period.

11 When you look at 12 stores, you are only looking at the
12 stores that are currently within the district, and that is the
13 main distinction between these two data sets. But otherwise,
14 you have presentations of the data, the analysis of the data is
15 the same.

16 HEARING OFFICER POWELL: Okay. So would the -- is there a
17 percentage point difference between the 14 stores, let's say
18 for example, I'm just trying to make this clear for the reader
19 of the record. The -- for example, would the 14 stores from
20 2019 and up to the present, would they show that, for example,
21 an interchange rate of 10 percent, and then the 12 store would
22 show an interchange rate or something of 8 percent or 14
23 percent, would it show a different number?

24 MS. DUARTE: Mr. Powell, sitting before you right now, I
25 have not memorized the exact numbers that would differentiate

1 between the group of 14 and the group of 12. Ms. Turner is the
2 witness that prepared these documents and the analysis and is
3 the person best equipped to testify with regard to the specific
4 levels of interchange and the different analysis when you look
5 at the group of 14 and the group of 12.

6 HEARING OFFICER POWELL: All right. This is what I'm
7 going to allow then. I'm going to allow -- Ms. Turner, you've
8 heard my question, do you understand what I'm trying to get at?

9 THE WITNESS: Yes.

10 HEARING OFFICER POWELL: Okay. Could you briefly, for the
11 reader of the record, explain what the difference is between
12 the 14 stores and the 12 stores?

13 THE WITNESS: So without looking at the other exhibit,
14 which I don't have in front of me, I don't know what the
15 percentage point difference is. The intention of doing the 14
16 store analysis was to be more complete and correctly reflect
17 the district over time.

18 We had originally done the 12 store analysis because we
19 were originally told there were the 12 stores in the data, and
20 that was the data that we were given. And then we updated it
21 to add the two additional stores, in order to be more complete
22 in our analysis.

23 So I have not compared the two analyses to each other
24 explicitly in a while, but I could.

25 HEARING OFFICER POWELL: All right. Mr. Gaudioso?

1 MR. GAUDIOSO: Yes. Quite frankly I think -- I'm sorry,
2 is it Dr. Turner?

3 THE WITNESS: It is Dr. Turner.

4 MR. GAUDIOSO: Dr. Turner and Ms. Duarte have stated I
5 think makes the Union's position crystal clear. First off,
6 they can and apparently they have the analysis for the 12
7 stores. We're talking about a relevant time period as if that
8 is a universally accepted definition of what is a relevant time
9 period, relevant because Starbucks has said this is the
10 relevant time period, because apparently there was some change
11 in their payroll system or something, I'm sorry, I don't mean
12 to misstate what I thought I heard Ms. Duarte said, but
13 apparently, we're talking about a relevant time period of their
14 own creation.

15 They have the analysis for the 12 stores and if you
16 determine that a single store unit is not an appropriate unit,
17 it's presumably because there's interchange within the 12
18 stores currently existing. There's no need whatsoever, it
19 should apparently not be a burden because Dr. Turner's already
20 done that analysis. I think we can all pretty much assume that
21 the addition of these two other stores is going to push the
22 analysis further to where Starbucks would prefer.

23 MS. DUARTE: Objection, objection, you cannot make that
24 characterization.

25 MR. GAUDIOSO: Argument.

1 MS. DUARTE: You cannot make that characterization.

2 HEARING OFFICER POWELL: All right. Everybody -- she's
3 right, Mr. Gaudio, I mean, you can't make that assumption or
4 --

5 MR. GAUDIOSO: I'm willing to take that risk that --

6 HEARING OFFICER POWELL: All right. This is what we're
7 going to do.

8 MR. GAUDIOSO: We're talking about this so-called relevant
9 time period because it's their definition of what's relevant.

10 HEARING OFFICER POWELL: Okay.

11 MR. GAUDIOSO: When really the only thing that should be
12 universal that is everyone would accept that right now,
13 District 761 has 12 stores --

14 HEARING OFFICER POWELL: Okay.

15 MR. GAUDIOSO: -- and that should be the limit of the --

16 HEARING OFFICER POWELL: All right. I've heard enough.
17 This is what I'm -- we're going to do.

18 Ms. Duarte, I'm going to allow a very limited amount of
19 testimony on the 14 stores, just to get the point across, you
20 know, I don't think we need to spend a lot of time on the 14
21 stores. I do think you need to spend more time on the analysis
22 of the 12 stores, and let the reader -- so it's clear to the
23 reader of the record what the difference is between the 14
24 stores and the 12 stores.

25 That's my ruling. So please go forward, I'm going to

1 allow you a short time to go forward on the 14 stores, and then
2 we'll -- I'll ask you -- we will ask you about the 12 stores,
3 and hopefully the reader of the record can determine what is
4 relevant and what needs to be taken out from each. All right?

5 MR. GAUDIOSO: And, Mr. Powell, if I may just so the
6 reader of the record is clear on the Union's clear objection --

7 HEARING OFFICER POWELL: Yes.

8 MR. GAUDIOSO: -- to the inclusion of two additional
9 stores that are not in the district right now.

10 HEARING OFFICER POWELL: Yes, I understand. The
11 petitioner's objecting to any evidence or analysis involving
12 the 14 stores. I understand that. The reader of the record --
13 it's clear for the record that you're objecting to that. You
14 have a standing objection based on that, but I'm going to allow
15 Ms. Duarte limited room to go forward on that.

16 MS. DUARTE: Thank you, Mr. Powell. And what I'd like to
17 do at this time is I'm going to circulate two new exhibits, 22-
18 A and 22-B and if I could please just have five minutes to
19 label those documents and circulate them to the group.

20 HEARING OFFICER POWELL: Okay. Off the record.

21 MS. DUARTE: Thank you.

22 (Paused at 3:34 p.m.; reconvened at 3:40 p.m.)

23 HEARING OFFICER POWELL: Ms. Duarte.

24 MS. DUARTE: Thank you, Mr. Powell.

25 BY MS. DUARTE:

1 Q So, Ms. Turner, if you could please open Employer Exhibit
2 22-A which was just circulated.

3 A Yes, I have it open.

4 Q What is this document?

5 HEARING OFFICER POWELL: I'm sorry, Ms. Duarte, can you
6 share your link so everyone can see that?

7 MS. DUARTE: I was going to ask Ms. Turner to share her
8 screen.

9 Q And, Ms. Turner, could you please share? It's Employer
10 Exhibit 22-A with us.

11 A (Witness complies)

12 HEARING OFFICER POWELL: Mr. Gaudioso, it's a graph, a
13 circle graph, a pie graph.

14 MR. GAUDIOSO: I see it.

15 HEARING OFFICER POWELL: Okay. Go ahead, Ms. Duarte, I'm
16 sorry.

17 Q So what is Employer 22-A, Ms. Turner?

18 A This is a report that we prepared on the 12 stores
19 currently in District 761.

20 Q And what time period is covered under this report?

21 A April 29th, 2019 through January 2nd, 2022.

22 Q And what population is included in this report?

23 A This is partners who are working in District 761 at some
24 point during that period, excluding store managers.

25 Q And generally speaking, how did you analyze the data sets

1 to come up with this report?

2 A Generally speaking, we read the data into our statistical
3 analytical software, create statistics and spit them out as for
4 assets that you see here.

5 Q Ms. Turner, could you please walk us through the first
6 seven pages of this document?

7 A Sure. So again, this is partners excluding store managers
8 working in District 761 at any point during the period that was
9 covered by the data. And this shows the partners broken down
10 on the basis of how many stores in the district they worked in
11 during that about two and a half year period.

12 And this graphic shows that about 61 percent of the
13 partners working in the district work at only one store in the
14 district. And the remaining 38 percent work in two or more
15 stores in the district during that two and a half year period,
16 with about 20 percent working in three or more stores during
17 that period.

18 Q Ms. Turner, I note on this chart that the date designated
19 at the top reads January 2nd, 2022; is that correct?

20 A That is correct.

21 Q So is the time period covered by this report include data
22 through January 2nd, 2022?

23 A Yes.

24 Q Thank you. You may proceed.

25 A On page 2, this is the same breakdown of employees working

1 in the district, but it's limited to those whoever worked at
2 the petition store, Store is 7853 during that period. And this
3 shows that 31.7 percent or about a third of them worked only at
4 the petition store during that period. The other two-thirds
5 work at two or more stores during the period, with a little
6 over a third working in three or more stores during the
7 relevant period.

8 This is now page 3 of the graphic, and this breaks down
9 the stores that are in the district currently and they're
10 labeled at the bottom, so each bar represents a single store
11 within the district and the bar with the asterisk labeled 7853
12 is the petition store.

13 And the 100 percent, see how it's labeled 0 percent to 100
14 percent, is the breakdown of employees whoever worked in each
15 of those stores, based on whether that is their home store. So
16 the blue and the orange together are home store employees,
17 meaning that that is their assigned home store versus whether
18 they were a borrowed employee working in that store.

19 So the gray portion of each bar are the proportion of
20 employees working in each store that are borrowed. And then so
21 within the petition store, we see that just under 60 percent of
22 the partners working in that store during that period are
23 assigned that as their home store while they're working there.
24 And just over 40 percent are borrowed partners that worked at
25 that store at some point.

1 And then the breakdown between the orange portion of the
2 bar and the blue portion of the bar is the blue are home store
3 employees who only worked at their home store. And the orange
4 are home store employees who worked at both the home store and
5 at other stores throughout the district.

6 Q Ms. Turner, as you're using the phrase home store, what do
7 you mean by that?

8 A I mean that those are employees, so within the data we can
9 see on each person day where a person worked, so their work
10 store and what their assigned home store was, so the store to
11 which -- on which they're on the roster.

12 And so when I call somebody a home store employee, I just
13 mean that their home store in a given shift is assigned as that
14 store.

15 Q Thank you. If you could please go to the next chart.

16 A Yes. So this chart shows the percent of store days, so
17 that's a day that a store is open, in which they are utilizing
18 at least one borrowed partner. So that's store days that are
19 utilizing shared labor. Across the district the average is
20 19.8 percent of store days requiring at least one borrowed
21 partner. So that's about one in five days, that if you're
22 working in a store, there will be a borrowed partner working in
23 the store.

24 And there's variation across stores within the district in
25 that average, but every store in the district is borrowing and

1 the petition store is at about 18 percent of store days. So
2 again, about one in five store days there's a borrowed partner
3 working in the store.

4 This is now page 5 and here, we're looking at the percent
5 of person days or person-ship that are borrowed across the
6 district. And the red dotted line it represents that district
7 average borrowed percent of partner days of 2.9 percent. And
8 each bar represents the average borrowing five day of the week.

9 And what this graphic shows is that there is borrowing
10 occurring on every day of the week, Sunday through Saturday.
11 There's a little bit less borrowing on Mondays and Tuesdays, a
12 little bit more on Saturdays and Sundays. But there's not a
13 lot of variation around the average. It's within 2 and a half,
14 3 and a half percent every day of the week, so it's not
15 strictly a weekend phenomenon or a Friday phenomenon that the
16 borrowing is happening. It's happening every day of the week
17 on average.

18 Q Ms. Turner, and with this chart specifically, this is
19 referred to the district or the petitioned for store?

20 A This is the district.

21 So turning to page 6, this is the same as the prior
22 graphic, which shows the district average borrowing of 2.9
23 percent of partner days as the red dotted line here. But each
24 blue bar now instead of being an average or a day of the week,
25 is an average for a date of the year.

1 So the dates are labeled on the bottom from January 1st
2 through December 31st, and each one of these is an average
3 across all the example January 1st that occur in the data,
4 there are two.

5 And what this shows is that there are changes so
6 associated with, for example, COVID, or associated with
7 Christmas Day, which is this spike towards the right, but there
8 is borrowing occurring year round and there's variation in the
9 borrowing that's occurring year round and there's no month in
10 the year where there's no borrowing occurring across the
11 district.

12 Q Ms. Turner, how did you select the dates that you used for
13 this analysis?

14 A We used all of the dates in the data that was provided to
15 us.

16 So this is the final of the seven pages. This is a map
17 depicts graphically or geographically the borrowing across
18 district, across the district, across stores within the
19 district.

20 And each dot is labeled as a store within District 761 and
21 labeled. And the petition store is in red, to the left part of
22 the map, 7853, and each of the lines with an arrow depict some
23 partner days that were borrowed from one store to another.

24 So, for example, the yellow lines. So from store 7332 to
25 various other stores in the district with an arrow pointing to

1 the store that a partner was borrowed by. And what this borrow
2 (audio interference) -- and borrowing from multiple other
3 stores in the district.

4 Q Ms. Turner, what is the significance of the different
5 colors in this chart?

6 A Each color represents one store's employees that are being
7 lent to other stores.

8 Q And what significant, if any, does the width of the line
9 indicate in this chart?

10 A The width -- the wider the line, the more partner days
11 were shared between the two stores.

12 Q Ms. Turner, is this the completion of the first set of
13 analysis that you performed?

14 A It is.

15 Q And after you prepared this initial analysis, did you
16 conduct any sensitivity or bias analyses?

17 A Yes, we did. So we performed three types of checks which
18 ends up being six sensitivity analysis. The first is looking
19 at the impact of COVID on the interchange. So the analysis
20 only looks at the portion of the data that occurs before COVID
21 and we've defined that as before March 1st, 2020.

22 And the idea is that if the interchange is being driven
23 primarily by COVID that we would see a drastic reduction in the
24 amount of interchange that you would see in the set of analyses
25 that removes the COVID period from the data.

1 Q And when you controlled -- let me pause you there. When
2 you controlled for COVID, what if anything, did you conclude?

3 A Yeah. So when we removed the COVID period from the data,
4 we still saw significant amounts of interchange occurring in
5 the analysis.

6 Q Could you please walk us through pages 8 through 14 of
7 your analysis?

8 A Yes. So this is the -- a similar graphic to page 1, but
9 now we're looking only at the pre-COVID data. So we've limited
10 data on District 761 to just April 9th, 2019 to February 29th,
11 2020, so now we're looking at ten months of data rather than
12 two and a half years of data.

13 And again, we break down the partners working in the
14 district based on how many stores they worked in during that
15 ten month period. And we see that 74 percent of them, about
16 three-quarters work in just one store during that period, and
17 26 percent of them about a quarter, work in two or more stores
18 during the ten month period.

19 This is now page 9. And we see that this is the
20 equivalent of page 2 where we're looking at just Store 7853 and
21 partners whoever worked in Store 7853. And during the ten
22 month pre-COVID period we see that about 45 percent of them
23 work in one store, just the petition store during that period
24 and 55 percent of them work in two or more stores. And almost
25 a quarter of them work in three or more stores during the ten

1 month pre-COVID period.

2 HEARING OFFICER POWELL: Okay. Well, I have a question,
3 Ms. Turner. I'm sorry, Ms. Duarte, to cut you off, but I'm
4 looking -- does -- is there any chart that says, how many like
5 days this includes, because if one -- it seems to me from what
6 you're explaining if one person wants to work one day in two
7 years at a different store, then they'd be counted in this
8 graph as part of the 31 percent, even though they only worked
9 one day at that store; is that correct?

10 THE WITNESS: This is ten months, but yes, that is
11 correct.

12 HEARING OFFICER POWELL: Right.

13 THE WITNESS: It does not differentiate based upon how
14 many shifts they worked in different stores, on how many stores
15 they work in.

16 HEARING OFFICER POWELL: Okay.

17 THE WITNESS: And to answer your first question, there is
18 a footnote in the store that shows the average percent of
19 partners borrowed by day of the week that calls out the number
20 of partner days or partner shifts that were borrowed.

21 So during the pre-COVID period, the ten month period, the
22 1.6 percent of partner days that were borrowed represents 571
23 partner days or partner shifts that were borrowed.

24 HEARING OFFICER POWELL: Okay. But there are 300 and
25 something persons in the district, correct?

1 THE WITNESS: I don't know off the top of my head how many
2 people worked in this COVID period.

3 HEARING OFFICER POWELL: Okay. All right. Okay. I'm
4 sorry, Ms. Duarte, go ahead.

5 BY MS. DUARATE:

6 Q Ms. Turner, I believe you were discussing pages 8 through
7 14, the pre-COVID period and I think you were up to the second
8 chart.

9 A Yes, I was moving on to page 10, which again shows the
10 breakdown of partners based on whether it's their home store or
11 a borrowed partner working in the store across the district.

12 And still we're seeing that every store in the district is
13 borrowing. Every store in the district is lending and the
14 petition store has about 40 to 45 percent of the partners
15 working in the store are borrowed partners during that ten
16 month period.

17 This is the percent of store days requiring at least one
18 borrowed partner. Here, it's about 16 percent of store days
19 across the district. In the petition store, it's a little over
20 20 percent of store days that have at least one borrowed
21 partner working in the store.

22 This is the one that I jumped forward to, I'm on page 12
23 now and this shows that the average percent of partners that
24 are borrowed by day of the week, on average across all days of
25 the week is 1.6 percent, that's the red dotted line. And the

1 average five day of the week again shows that there's borrowing
2 occurring every day of the week during that ten month period.

3 Page 13 again shows five day of the year that there is
4 borrowing occurring across the district. The red dotted line
5 is the 1.6 percent of partner days. The gray shaded area is
6 March and April. That's shaded gray because we're only looking
7 at a ten month period here, so there's never any data for March
8 and there's only April data the 29th and the 30th.

9 So there's no data for this gray shaded area, but across
10 the months that there are data, there's borrowing both above
11 and below the average in every month of the year.

12 And then finally this is the map of borrowing across the
13 district. And still seeing the patterns that we saw in the
14 first graphic, there's less data now because it's ten months
15 versus two and a half years, but still seeing connections
16 between multiple stores in the district, not just the
17 neighboring stores, but lending to and from multiple stores for
18 each store.

19 Q Ms. Turner, in addition to controlling for the impact of
20 COVID-19, did you also control for any other factors?

21 A Yes. We controlled for stores opening or closing,
22 although in this scenario there's only the two stores opening.
23 So we removed the stores that opened from the data and looked
24 at just the stores who are open the entire period. And in that
25 sensitivity test, we were looking to see how much of the

1 interchange was being driven by stores that were new, that were
2 opening during the data period and partner borrowing that was
3 associated with that.

4 Q If I could direct you please to pages 15 through 21. And
5 is this the analysis that corresponds to the exclusion of the
6 opening stores?

7 A It is.

8 Q Could you please walk us through this data set?

9 A Yes. So here now, we're looking at ten stores, excluding
10 the two that opened toward the end of 2021 and looking at the
11 same seven set of graphics, this first one looks at all the
12 partners who worked in stores in the district, excluding those
13 two stores during the two and a half year data period and it
14 shows that about two-thirds worked in one store during that
15 period. And a third worked in two or more stores. And then
16 about 15 percent worked in three or more stores.

17 Within the petition store on page 16 you see that again
18 about a third of the partners ever working in the petition
19 store only work in the petition store. Two-thirds work in two
20 or more stores during the period excluding the two stores that
21 opened, and about a third work in three or more stores during
22 the data period, excluding those two stores that opened.

23 I'm on page 17 now, and we're looking at the breakdown of
24 partners by home store versus borrowed across the district.
25 And again, we're seeing similar numbers to what we've seen in

1 the other two iterations, where every store is borrowing, every
2 store is lending partners. And within the petition store,
3 about 60 percent of the partners working there during the
4 period covered by the data are home store partners, and about
5 40 percent are borrowed partners with about 25 percent being
6 partners who have that as their home store, and also at some
7 point work at other stores in the district.

8 I'm on page 18 again, so this is the chart that shows the
9 percent of stored days requiring borrowed partner. So the
10 percent of days where at least one borrowed partner is working
11 in the store, and now it is 17.1 percent once we exclude those
12 two stores that opened.

13 So again, that's close to one in five days or one in six
14 days that the stores are open, there's a borrowed partner
15 working and the petition store is close to that average.

16 I'm moving on to page 19 and here we show -- I'm sorry.
17 Here, we show the percent of partner days that are borrowed and
18 this is excluding those two stores that are new, so any shift
19 to those stores or any shifts from home partners of those
20 stores. And here we're seeing 2.4 percent of partner days
21 borrowed, so that is line with what we've seen in the other
22 iterations. And we're still seeing borrowing across days of
23 the week, Sunday through Saturday with a small dip on Mondays
24 and Tuesdays compared to Saturdays and Sundays.

25 Similarly, we're seeing a pattern across days of the year

1 on page 20, where there is borrowing occurring in every month
2 of the year across -- on average with again now that we've put
3 COVID back in, we do see the COVID spike. We see Christmas Day
4 to the far right, but there's no month of the year where
5 there's no borrowing occurring, meaning that this is a regular
6 occurrence across days of the year.

7 And coming finally to page 21 which is the map graphic
8 again. Now, you only have ten stores on the map, but again you
9 see connections between multiple stores, not just the
10 neighboring stores, but there's lending and borrowing occurring
11 across multiple geographic locations within the district.

12 Q Ms. Turner, in addition to controlling for the opening,
13 for stores that opened during the time period, did you control
14 for any other factors?

15 A Yes. So we controlled for permanent transfers in two
16 different ways, so two different sensitivity analyses. So the
17 question is how much of the interchange is being driven by
18 partners who permanently transfer, but performed some borrowed
19 shifts before they're transferred those through.

20 So for example, they transfer from store A to store B, but
21 before they're transfer goes through in the data, so before
22 their home store changes from store A to store B, they work a
23 bunch of shifts in store B. So this is the primary driver of
24 the interchange in the data.

25 So the first way in the first sensitivity analysis that we

1 control for this is we say okay, if any set of stores is your
2 change between your home stores at some point, so you change
3 from A to B, then we will take out any shared shift that you
4 performed between A and B.

5 So if you're at home store A and you work shifts at B, or
6 you're at home store B and you perform shifts at A, we're
7 removing those from the data for this analysis. We're leaving
8 all of the shifts that you work at A with it as your home store
9 and all the shifts that you work at B with is as your home
10 store, just the borrowed shifts between those two stores.

11 Similarly, if you're borrowed by store C at any point
12 during the data and it's never your home store, that shift is
13 still in the analysis. So we're only removing shifts here,
14 we're not removing any people, and just shifts where over time
15 you change your home store and you're being borrowed between
16 those two stores.

17 Q If I could please ask you to turn pages 22 through 28.
18 These are the analysis that corresponds with the description
19 for the pre and post transfer shifts that you just described?

20 A It is. So these are the data for the two and a half year
21 period that we have data once we removed those shared shifts
22 for the permanent transfer partners.

23 Q And could you please walk us through your findings with --
24 in regards to this control factor?

25 A Yes. So again, seven graphics. The first one on page 22

1 looks at the partners who are working in the district during
2 the period. This has not changed from the first page because
3 we have not removed any people and we have not removed any
4 stores, just shifts that they worked while being borrowed
5 between those stores. So we still see what we saw in the first
6 graphic, which was 61 and a half percent of the partners
7 working in only one store while 38 and a half percent is
8 working in two or more stores.

9 Similarly with the petition store, you see about a third
10 of the partners on page 23 working in only one store. And two-
11 thirds working in two or more stores, with a little over a
12 third working in three or more stores.

13 On page 24 we again see the breakdown within each store in
14 the district based on whether partners are assigned that as
15 their home store and only work there, assigned that as their
16 home store, and work both in their home store and at other
17 stores, or are borrowed partners.

18 And at the petition store again we see 60 percent are home
19 store partners and 40 percent are borrowed partners. Again,
20 all stores in the district are lending and all stores in the
21 district are borrowing partners.

22 On page 25, this is now the store days requiring a
23 borrowed partner, so at least one borrowed partner is working
24 in the store, and this is now 14.6 percent of store days or
25 about one in six days that a store is open, where there's at

1 least one borrowed partner working in the store.

2 The petition store, it's a little bit below that average
3 here at about 10 percent of store days utilizing at least one
4 borrowed partner.

5 This is the, on page 26, the average percent of partners
6 borrowed by day of the week and the red dotted line is the
7 average across all days of the week of 2.1 percent of partner
8 days borrowed. Each blue bar is the average five day of the
9 week and again, there's a small amount of variation around the
10 average across all days of the week, showing that this is a
11 regular practice across days of the week and not limited to
12 certain days of the week.

13 Similarly, page 27 looks at the borrowing across days of
14 the year, once we remove those shifts that are borrowed between
15 home stores for permanent transfers. And again, the red dotted
16 line is 2.1 percent partner days and we're seeing borrowing
17 across months of the year with similar patterns to what we've
18 seen before we removed these shifts.

19 Q So, Ms. Turner, when you controlled for the pre or post
20 transfer shifts, what if anything, did you conclude?

21 A That is not the primary driver of the interchange between
22 partners, between stores in the district.

23 Q In addition to the preimposed transfer shifts, did you
24 control for any other factors?

25 A Yes. We did another version that controlled for transfers

1 by completely removing anybody who -- any partner who
2 permanently transferred from the data and only looking at
3 partners who had just a single home store during the data
4 period.

5 Q And is this analysis contained in pages 29 through 35 of
6 your report?

7 A Yes.

8 Q And when you controlled for this factor of transfers, what
9 if anything, did you conclude?

10 A We concluded that even when you remove the permanent
11 transfers from the data, altogether we still see interchange
12 across all the majors of interchange that we are using here,
13 and that is not the primary factor impacting interchange across
14 the district.

15 MS. DUARTE: Mr. Powell, we -- I can ask her to go through
16 each of the graphs again if you'd prefer, but it's going to be
17 the same format just the new data set that we're describing.

18 HEARING OFFICER POWELL: Okay. Yeah, I actually was going
19 to ask you that because it seems to be just -- it's the same --
20 each chart says the same thing about with different controls on
21 them. So I'll accept and -- I mean, an offer of proof that say
22 the rest of the documents reflects that with the different
23 controls and if you could just tell me what the next set of --
24 from 35 to 42 and from 42 to 49, what the control is.

25 MS. DUARTE: Thank you.

1 BY MS. DUARTE:

2 Q So, Ms. Turner, if I could ask you to -- in addition to
3 controlling for transfers, did you control for any other
4 factors?

5 A Yes. So we did two versions of the analysis called the
6 cumulative version, where we controlled for all three factors
7 at once. So we looked at both the impact of COVID and the
8 impact of store openings and closings and the impact of
9 transfers on the data at once.

10 So in cumulative version A, we used the weaker version of
11 the transfer sensitivity analysis. So we're only excluding the
12 shifts that permanent transfers share between their two home
13 stores. We're also only looking at the pre-COVID period and
14 there are no stores that opened or closed during that ten month
15 pre-COVID period, so there are no stores to exclude on that
16 basis.

17 Q And is cumulative A pages 36 through 42 of your report?

18 A Yes.

19 Q And what, if anything, did you conclude once you
20 controlled for those three factors?

21 A That even controlling for those three factors together,
22 there's still measures of interchange that come out of these
23 data and are not fully explained by those three factors
24 together.

25 Q And aside from cumulative A, did you perform any other

1 controls?

2 A Yes, one more, cumulative B, which is very similar to
3 cumulative A, except instead of removing just the shared shifts
4 or permanent transfers between A -- store A and store B, we're
5 removing them from the data altogether.

6 So we're only looking at the pre-COVID period. There are
7 no stores that opened or closed during the pre-COVID period and
8 we're removing anybody who permanently transfers entirely from
9 those data.

10 Q And when you controlled for these three factors, what if
11 anything, did you conclude?

12 A We concluded that there's still significant amount of
13 interchange occurring across the district, even after removing
14 the data corresponding to those sensitivity analyses, meaning
15 that those three factors together are not solely driving the
16 interchange in the district.

17 Q Ms. Turner, is the cumulative B analysis in pages 43
18 through 49 of your report?

19 A Yes.

20 MS. DUARTE: With this, Mr. Powell, the employer moves for
21 the admission of Employer Exhibit 22-A.

22 HEARING OFFICER POWELL: Okay. Mr. Gaudioso?

23 MR. GAUDIOSO: No objection.

24 HEARING OFFICER POWELL: All right. 22-A is admitted.

25 (Employer's Exhibit No. 22-A received)

1 BY MS. DUARTE:

2 Q Ms. Turner, if I could please ask you to pull up exhibit -
3 - Employer Exhibit 21-A.

4 A 21-A. Got it.

5 Q I see that this report is 49 pages long. Does the format
6 of this report match the format of the report we just reviewed
7 for Employer Exhibit 22-A?

8 A It does.

9 Q And what is the time period that you looked at for this
10 report?

11 A This is April 29th, 2019 through January 9th, 2022.

12 Q And what stores are included in this data set?

13 A So these are the 14 stores that at some point were in
14 District 761 between April 29th, 2019 and January 9th, 2022.

15 Q What additional stores are included in this report that
16 were not included in Employer Exhibit 22-A?

17 A This includes a store that closed, store 19504, Quaker
18 Bridge which closed in August of 2021, according to the store
19 data that I was provided. And it includes a store that it's my
20 understanding left the district in November of 2021, store
21 number 50234, 102 South Warren Street.

22 Q And you said that store left the district in what month, I
23 did not hear you?

24 A My understanding is November 19th, 2021.

25 Q Okay. Generally speaking, how did you analyze the data

1 for this report?

2 A We analyzed it the same way that we analyzed the data for
3 the 12 stores, so reading in the data to statistical software
4 calculating statistics and spitting them out as these graphics.

5 MS. DUARTE: Mr. Powell, I could go through the 49 pages
6 as I did last time. I will represent that the charts should be
7 identical, what may be different is the data based on the
8 inclusion of the two stores. With that representation, we'd
9 move to admit Employer Exhibit 21-A.

10 HEARING OFFICER POWELL: Okay. So the -- basically for
11 this exhibit, the same methodology, the same factors were used
12 as in the previous one, except this one includes two additional
13 stores --

14 MS. DUARTE: Exactly.

15 HEARING OFFICER POWELL: -- as in the first exhibit.

16 Okay. And the numbers may have changed.

17 MS. DUARTE: Yes.

18 HEARING OFFICER POWELL: Okay. And you don't know what
19 that -- what the overall change is over those numbers, do you,
20 off hand?

21 MS. DUARTE: We could look, but no.

22 HEARING OFFICER POWELL: No, that's fine. That's easy
23 enough we can just compare the two documents, that's fine.

24 MS. DUARTE: Yeah.

25 HEARING OFFICER POWELL: Mr. Gaudio, I just wanted to

1 make sure that that was clear that was different.

2 MR. GAUDIOSO: It's clear, I would still object to this
3 particular document.

4 HEARING OFFICER POWELL: Okay. I'm going to accept it and
5 let the reader of the record review it and give it its proper
6 weight, with the understanding that this has two additional
7 stores in it, as opposed to the 12. All right. Ms. Duarte.

8 MS. DUARTE: Thank you, Mr. Powell.

9 HEARING OFFICER POWELL: So this document is admitted.

10 (Employer's Exhibit No. 21-A received)

11 BY MS. DUARTE:

12 Q Ms. Turner, if I could please ask you to pull up Employer
13 Exhibit 22-B.

14 A All right.

15 Q And, Ms. Turner, what is this document?

16 A This is a report that compares the partner listing data to
17 the aggregated data and looks at the active rosters for the
18 store, 12 stores in the district, compared to those data.

19 Q And what time period is covered for those reports?

20 A April 29th, 2019 through January 2nd, 2022.

21 Q And just to be clear, how many stores are included in this
22 report?

23 A Twelve.

24 Q Could you please walk us through your findings on this
25 report?

1 A Yes. So the first page shows the shifts that were worked
2 by currently active partners in each store. So looking at the
3 partner listing as provided and keeping only the non-terminated
4 partners in each store, we matched those back to the shifts
5 that were worked in the store over the data period, so April of
6 2019 to January 2022.

7 And the blue bar for each store is the percent of the
8 shifts within that store that were worked by currently active
9 home store partners or active roster partners in that home
10 store.

11 And the orange bar is shifts that were worked by anyone
12 else so they could have been borrowed, they could be
13 terminated, or they could have transferred to another store.

14 Q What is the significance of this chart?

15 A Yep. This just shows the percent of shifts worked over
16 the data period by someone who is still in that store. And the
17 final two stores to the far right, 58420 and 64615 are the
18 stores that opened at the end of 2021. So haven't been open
19 for the entire data period. The remaining stores vary from
20 about 20 percent to a little over 60 percent of the shifts
21 worked over the two and a half year period, that were worked
22 currently active folks working in that home store.

23 Q Ms. Turner, if you could please proceed to the second page
24 of this report.

25 A Yep. So page 2 looks at the head count of home store

1 partners, so again by home store, I mean that was your home
2 store at some point in the data. And looks at whether you're
3 active or non-active in that home store.

4 The active partners are represented by the blue bar, and
5 non-active are by the orange bar. So again, everybody within a
6 bar was assigned to the store as their home store. If you're
7 an orange bar, you are either terminated or you have moved to
8 another store since you worked in that store during the data
9 period. If you're blue, you're on the active roster for that
10 store.

11 So this shows that for the two newer stores that recently
12 opened between 75 and 80 percent of the partners who were ever
13 assigned that as their home store in two and a half years are
14 currently active. And for the stores that were opened for the
15 whole two and a half years between about 20 percent and about
16 45 percent of the partners who were ever assigned to that store
17 as their home store are currently active employees.

18 Q Ms. Turner, if you could please go on to page 3 of your
19 report.

20 A Yes. So page 3 looks at the average tenure by home store
21 of the active partners in the home stores. So again, these are
22 the same people that were in the blue bars of page 2. These
23 are the partners who are currently assigned to that home store
24 and not terminated. And the -- these are measured in months,
25 the tenure is measured in months.

1 Within the petition store, 7853, the average tenure of all
2 of the active employees at the store is 34.4 months, so just
3 under three years. And across the district by store it varies
4 from about 16 months to about 46 months.

5 Q And, Ms. Turner, if you could finally to the last page of
6 this report, what were your conclusions here?

7 A Yep. So this graphic is the same as the previous graphic,
8 which shows average tenure by home store, but now we're showing
9 median tenure by a home store. And median tends to be a better
10 measure of central tendency than average, because averages can
11 be driven by outliers, so if there are two or three people with
12 tenures of experience, they have a large impact on the average
13 compared to when you look at the median, you're just lining
14 everybody up based on how much tenure they have and you're
15 looking at the middle person.

16 So this is the middle person in each store, based on their
17 tenure in months. And here, you see these are lower than the
18 average because of the phenomenon I was telling you about where
19 if there are a few people who have been there a lot longer than
20 everybody else it drives the average up.

21 The median tenure at each store by district ranges from
22 just under four months to twenty -- about 26 months. At the
23 petition store, it's 11.7 months, which means that half of the
24 -- at least half of the active partners at store 8753 have been
25 there less than a year, have been employed with Starbucks for

1 less than a year.

2 Q Ms. Turner, what is the population that's included in this
3 report?

4 A This is all active partners excluding store managers
5 within the store.

6 MS. DUARTE: Mr. Powell, the employer moves to admit
7 Employer Exhibit 22-B.

8 HEARING OFFICER POWELL: Mr. Gaudioso?

9 MR. GAUDIOSO: No objection.

10 HEARING OFFICER POWELL: All right. So admitted.

11 (Employer's Exhibit No. 22-B received)

12 BY MS. DUARTE:

13 Q Ms. Turner, if you could please open Employer Exhibit 21-
14 B. I will note that this is a four page report. Does the
15 analysis for this report Employer Exhibit 21-B match the
16 analysis that you performed for Employer 22-B?

17 A It's the same methodology, but it has the data for the 14
18 stores. Note that there's actually no active partners at the
19 two stores that are no longer a part of the district, so it's
20 really just for those 12 stores again.

21 It does include an additional week of data, because the
22 data on the 14 stores were provided at a later date than the
23 data on the 12 stores.

24 MS. DUARTE: Mr. Powell, the employer moves to admit
25 Employer Exhibit 21-B.

1 HEARING OFFICER POWELL: Once again for clarification, the
2 methodology and everything in 21-B was the same as was used in
3 22-B, but except this 21-B has 14 stores instead of the 12
4 stores in 22-B, correct?

5 MS. DUARTE: Correct.

6 HEARING OFFICER POWELL: All right. Just so it's clear
7 for the reader of the record. Mr. Gaudioso?

8 MR. GAUDIOSO: Objection, same reason as before.

9 HEARING OFFICER POWELL: Okay. So noted, accepted.

10 (Employer's Exhibit No. 21-B received)

11 MS. DUARTE: Mr. Powell, I have no further questions at
12 this time.

13 HEARING OFFICER POWELL: Okay. Mr. Gaudioso.

14 MR. GAUDIOSO: Yes.

15 CROSS-EXAMINATION

16 BY MR. GAUDIOSO:

17 Q Good afternoon, Dr. Powell or I'm sorry, Dr. Turner.

18 A Good afternoon.

19 Q My name is Dave Gaudioso, I'm counsel for the union. I
20 don't have a lot of questions for you, but let me get some
21 context. Your firm is the same firm that has provided the data
22 analysis for all of the representation cases before the Board
23 in other regions, correct?

24 A Yes.

25 Q And have you personally testified in any of these cases?

1 A Yes.

2 Q Do you recall which cases you testified in?

3 A Yes, I testified in Mesa. I testified in Colorado. I
4 testified in Boston. And I testified in Knoxville.

5 Q Okay. Has the methodology that you employed changed in
6 any of these cases?

7 A We have added analyses over time to what we've done, but
8 we -- I guess I -- we've added analyses to what we've done, so
9 yeah.

10 Q What analyses did you add?

11 A Well, for example, the second exhibit of four pages was
12 not presented in prior hearings.

13 Q Any reason why?

14 HEARING OFFICER POWELL: I'm sorry, when you say the
15 second exhibit of four pages, do you remember, what did that
16 one entail?

17 THE WITNESS: 21-B and 22-B.

18 HEARING OFFICER POWELL: Okay. The ones we just went
19 through, 21-B and --

20 MS. DUARTE: And, Mr. Powell, I'm going to object to the
21 question to the extent Mr. Gaudioso might be asking about
22 information that's covered by the attorney/client privilege.

23 MR. GAUDIOSO: I'm not asking --

24 HEARING OFFICER POWELL: I don't think so. I mean, he --
25 she just said -- he asked what -- basically what was presented

1 at the other case and she basically said that while we
2 presented everything except 21-B or -- the 21-B and -- because
3 we didn't make those yet, that's -- I mean, that's my
4 understanding.

5 MS. DUARTE: Mr. Gaudioso asked specifically why and I
6 would ask the court reporter to read the question back just for
7 clarity. I heard the question, why was it not used, which goes
8 directly to the case presentation strategy, which is covered by
9 the attorney/client privilege.

10 HEARING OFFICER POWELL: I said he what, but okay. Do you
11 want to ask that question, Mr. Gaudioso, why it wasn't
12 presented?

13 MR. GAUDIOSO: Yes, I do want to ask and I'm not asking
14 for anything that would breach attorney/client privilege but I
15 am curious to know if something didn't work in another region,
16 did we change our analysis to try a different tact.

17 HEARING OFFICER POWELL: Well, that -- I don't think
18 that's what she said. I think what she said it did -- she
19 added, it didn't exist, am I correct, Dr. Turner?

20 THE WITNESS: That's correct.

21 HEARING OFFICER POWELL: Those didn't exist before, so
22 they weren't used then and now they exist now. She added them
23 and they exist now.

24 BY MR. GAUDIOSO:

25 Q How does it change the analysis between what you have

1 testified to in say Knoxville and what you just testified to
2 for Hopewell?

3 A It just adds those four pages to the findings. It doesn't
4 change the rest of the presentation, which is identical what
5 we've presented in the past.

6 Q So in general, Dr. Turner, your methodology has stayed the
7 same.

8 A Correct. We haven't changed the analyses over time,
9 except to add new ones.

10 Q Okay.

11 HEARING OFFICER POWELL: You weren't -- okay, go ahead.
12 You weren't asking why they added new ones, were you, because I
13 think that would go to Ms. Duarte's objection.

14 MR. GAUDIOSO: No, I accept the answer that Dr. Turner
15 just provided.

16 HEARING OFFICER POWELL: Okay.

17 BY MR. GAUDIOSO:

18 Q Now, Doctor, I may have misunderstood your testimony.
19 Wasn't your testimony that there was borrowing in Hopewell
20 every day from April of 2019 to the beginning of January 2022?

21 A I don't think I said. I think I said there was borrowing
22 in every month.

23 Q Okay. So -- and when you talked about the sensitivity to
24 account for someone changing from a -- changing a home store
25 from let's say Hopewell to store B in District 761 --

1 A Uh-huh.

2 Q -- can you explain that, what was -- how was the
3 sensitivity -- how does the sensitivity adjust for someone
4 changing their home store?

5 A Yeah. There are two. The second one is easy to explain,
6 because anybody that we observed with two different home
7 stores, two or more home stores in the data at all, we threw
8 them away. So that's the one where we only look at single home
9 store partners.

10 The first one is harder to explain, so we don't throw the
11 person away, but if we ever see you having different home
12 stores, then we take that person and we say, okay, we're not
13 include any of the shifts where they're being borrowed between
14 those two stores. And it could be in either direction.

15 So if their home store is A and they're borrowed by B and
16 B is later their home store, then any of those A to B shifts
17 are thrown away.

18 Q Okay.

19 A So similarly any A to B shifts are thrown away. Does that
20 make sense?

21 Q Okay. To my limited math mind, yes.

22 HEARING OFFICER POWELL: All right. I just want to make
23 it -- if I can clarify because I think I understand what you're
24 saying. I just want to clarify so it's clear for the reader of
25 the record.

1 What you're saying, Dr. Turner, is if a person started off
2 in home store A, then several months later when to home store
3 B, any interchange between A and B was thrown out. So you only
4 included the data if they went to like store C, correct?

5 THE WITNESS: Only -- they're only borrowed shifts that we
6 would have included, or to other shifts, yeah. Yeah, we kept
7 all of their home store, their non-borrowed shifts no mater
8 where it was.

9 HEARING OFFICER POWELL: Right. But you then, if they
10 went to a different store like home store C, then you included
11 that one as well.

12 THE WITNESS: Yes.

13 HEARING OFFICER POWELL: Okay. Got it.

14 BY MR. GAUDIOSO:

15 Q And, Doctor, what is the significance of the April 29th,
16 2019 date?

17 A That's the date that the data that we were provided
18 started.

19 Q Do you know why it started on that date?

20 A I have an understanding that that is when Starbucks
21 changed their timekeeping system, and so the data only go back
22 that far.

23 Q Okay. So when you testified in the Knoxville case,
24 correct me if I'm wrong and you may not recall, if you don't,
25 let me know, but you did a similar sort of direct testimony

1 analysis using similar types of charts, correct?

2 A Yes.

3 Q And one of those charts indicated that 42.5 percent of
4 Starbucks employees at the Merchant Road store and that was the
5 store in question, had worked at another store in the Knoxville
6 market over a period of April 29th, 2019 and that only went out
7 to December 12th of 2021. Do you recall that?

8 A I don't recall the specific numbers or stores or dates.

9 Q Okay.

10 MS. DUARTE: Mr. Powell, I'm also going to object to this
11 line of questioning to the extent that it's beyond the scope of
12 direct examination and not relevant to the interchange in this
13 particular market.

14 MR. GAUDIOSO: Can I respond?

15 HEARING OFFICER POWELL: Yeah, go ahead. Well, it's the
16 same exact type of testimony as was provided in Knoxville, and
17 then when there was a further analysis of some of the tabs that
18 were part of the borrowed partner analysis, seems like what was
19 shown on the graphs wasn't necessarily what was borne out in
20 the actual hard data.

21 So I think it's very relevant if the -- if there's a wild
22 swing the percentage of borrowing or interchange in Hopewell as
23 the company would have you believe, I think it bears some
24 relevance to say, well, that wasn't borne out if you're using
25 the same methodology as Dr. Turner just admitted that she was,

1 that wasn't borne out in Knoxville.

2 HEARING OFFICER POWELL: Are you -- so are you trying to
3 use this towards credibility to attack credibility?

4 MR. GAUDIOSO: I'm trying to see what is different. I'm
5 trying to see why when you actually went through all of the
6 individual pieces that were provided in the tabs that
7 accompanied their borrowed partner analysis, you got
8 percentages of actual set of hours borrowed in the store that
9 was being petitioned for in Knoxville was very different than
10 what the graph showed.

11 MS. DUARTE: Mr. Powell, I'm --

12 MR. GAUDIOSO: And I want to see if that's the same thing
13 here.

14 MS. DUARTE: Mr. Powell, I have the same objection. Now,
15 we're going down a rabbit hole about what she may have
16 testified in Knoxville or not and has no relevance in this
17 case. To the extent Mr. Gaudioso is trying to make an argument
18 about the underlying data that was used in this case, he can do
19 that, but there's no relevance or anything that would be useful
20 with comparing the base data that was used for Knoxville when
21 this is a completely different hearing and completely different
22 data.

23 MR. GAUDIOSO: Well, we have taken administrative notice
24 of the documents in these other cases, including Knoxville.

25 HEARING OFFICER POWELL: Right, but if you -- if it's the

1 same issue in Knoxville, if there was an issue -- I think what
2 you're saying is, there was an issue in Knoxville and the same
3 issue exists here; am I correct?

4 MR. GAUDIOSO: I want to confirm if that's the case, I
5 want to confirm, you know, what we've seen on the various
6 graphs that have been presented, I would like to know if
7 there's an actual breakdown with various tabs within the
8 documentation -- I'm sorry, I just don't have it up right now
9 that has work store hours by shifts, borrowed shifts, total
10 hours, borrowed hours, percent of shifts, borrowed percent of
11 hours, borrowed, like we had in Knoxville. Do we have that
12 sort of breakdown?

13 MS. DUARTE: No, we don't. There is no analysis that was
14 performed by Starbucks like there was in Knoxville which I --
15 it's a completely different data set. The only data that was
16 the basis for her report and she's testified to this is the
17 aggregated data, the partner look-up, and the store list,
18 that's Employer Exhibits 20-A, 20-B and 20-C.

19 HEARING OFFICER POWELL: Okay. Hold on a second. I --
20 maybe I'm missing something here, but I thought that we had
21 said that we used the same methodology in this case that was
22 used in the previous cases.

23 MR. GAUDIOSO: Correct.

24 HEARING OFFICER POWELL: If that was the case then --

25 MS. DUARTE: Mr. Powell --

1 HEARING OFFICER POWELL: -- then --

2 MS. DUARTE: Mr. Powell, I can clarify this for you, it's
3 very simple. In prior hearings, there were two witnesses, Eli
4 Hannah and Ms. Turner.

5 HEARING OFFICER POWELL: Right.

6 MS. DUARTE: At this hearing, there's only Ms. Turner.
7 She's the only person that has performed a statistical analysis
8 of the interchange data. So whereas in prior hearings you
9 received -- the hearing officer would have received two
10 analysis of the interchange data. In this hearing, we've only
11 prepared one and that's the testimony that's being entered
12 through Ms. Turner.

13 There is no similar tab, like the one that was described
14 by Mr. Gaudioso in this case.

15 HEARING OFFICER POWELL: All right. No, that's not my
16 question.

17 MS. DUARTE: You're comparing apples and oranges, it's two
18 different cases, it's two different base datas and so to the
19 extent you're making an argument about how it rolled out in
20 Knoxville it's irrelevant in this case.

21 MR. GAUDIOSO: It's very relevant.

22 HEARING OFFICER POWELL: No, no, I'm going -- what I'm
23 asking you and what I don't -- I was -- I believe, I thought
24 that the methodology was used across the board, the same
25 methodology was used across the board, that was my

1 understanding, that's why I thought we had agreements on it,
2 the same methodology was used across the board, is that not the
3 case? Ms. Duarte?

4 MS. DUARTE: Mr. Powell, again the analysis that Mr.
5 Gaudioso is referring to was not prepared by Ms. Turner for the
6 Knoxville case.

7 HEARING OFFICER POWELL: No, that's -- Ms. Duarte, no, I -
8 -

9 MS. DUARTE: This is important, this is important.

10 HEARING OFFICER POWELL: I understand that somebody else
11 may have provided -- may have done the analysis and everything
12 like that, I'm not talking about who did the analysis or
13 whatever. I'm talking about the methodology. My understanding
14 was --

15 MS. DUARTE: The reason why --

16 HEARING OFFICER POWELL: -- that regardless, the
17 methodology was supposed to be the same, is that not the case?

18 MS. DUARTE: Ms. Turner's methodology for the analysis
19 that Charles River & Associates prepared is the same, and, Ms.
20 Turner, correct me if I'm wrong, but I understand it to be the
21 same. What Mr. Gaudioso is referring to is a document that
22 somebody else prepared that is not a part of this hearing.

23 So he's comparing two different documents and saying oh,
24 it must be true that there's a fallacy here, and it's a false
25 equivalency, it's apples and oranges. What Ms. Turner did in

1 our analysis is completely separate from what Mr. Hannah did in
2 prior hearings.

3 HEARING OFFICER POWELL: Okay. All right. So I -- okay
4 then. Then I was under -- then I misunderstood what's going
5 on. In the previous cases, there were -- the methodology was -
6 - is not the same that was used in this case.

7 MR. GAUDIOSO: Apparently not.

8 MS. DUARTE: That's not accurate. Ms. Turner, and I this
9 I think should be a question directed to the witness who can
10 testify about what methodology she used, but she performed the
11 same analysis of updating the data, including it in her
12 statistical device and we have testimony on that point in the
13 record right now. As to what her process was as to creating
14 the analysis that we've gone over today.

15 HEARING OFFICER POWELL: Okay. But my -- what I'm trying
16 to clarify for the reader -- this is important for the reader
17 of the record to understand, since we have taken administrative
18 notice of the previous cases, and the analysis et cetera there
19 is that from what I understand you're saying now, there was two
20 methodologies were used to present data in the previous case.

21 MS. DUARTE: Mr. Powell, do you know what I think would be
22 helpful --

23 HEARING OFFICER POWELL: No, hold on, Ms. Duarte, just let
24 me finish. And then you can let me know if I'm wrong. What my
25 understanding of what's said now and correct me if I'm wrong is

1 that in the previous cases, there were two methodologies used.
2 There was Ms. Turner's and then the other, Mr. Hannah; is that
3 correct, from who analyzed data in the previous cases, they
4 analyzed data and they used two different methodologies.

5 Ms. Hannah -- I'm sorry, Ms. -- not, Dr. Turner used the
6 same methodology in this case that she used in the previous
7 case; is that correct?

8 MS. DUARTE: And when you say previous case, are you
9 referring to Knoxville specifically?

10 HEARING OFFICER POWELL: Yes, yes, yes.

11 MS. DUARTE: Okay. And I think Ms. Turner needs to answer
12 that question on the record.

13 MR. GAUDIOSO: I think she did --

14 THE WITNESS: Yes.

15 MR. GAUDIOSO: -- answer that question. She said she did.

16 MS. DUARTE: Okay. So then we have the same methodology.

17 HEARING OFFICER POWELL: Correct.

18 MS. DUARTE: The issue that we have right now is that Mr.
19 Gaudioso is referring to a different exhibit that was entered
20 into by a different witness in a different hearing and he's
21 saying well the same is true here. Well, in this hearing we
22 don't have that witness, we don't have that document, and we
23 don't have that data, so.

24 HEARING OFFICER POWELL: So the statistical analysis that
25 was used in that case, there were two, am I correct, or am I

1 not correct, that's the first question.

2 MS. DUARTE: Mr. Powell, and I think it would be helpful
3 since Mr. Gaudioso is the person that opened the door on this
4 discussion that he make an offer of proof with regard to what
5 was he going to --

6 HEARING OFFICER POWELL: No, I'm going to decide --

7 MR. GAUDIOSO: No, no.

8 HEARING OFFICER POWELL: -- how the hearing is going. So
9 I'm not going to ask him for an offer of proof. I'm asking --
10 your client presented evidence in that case, so you should
11 know. What -- and you asked me and the Board to rely on that
12 methodology et cetera and take notice of it in the previous
13 case, you both did.

14 So I'm asking you, is that the case? I mean, if you need
15 a minute or so to confirm with somebody I'll let you do that,
16 but I need to know --

17 MS. DUARTE: Mr. Powell, I was not --

18 HEARING OFFICER POWELL: -- and the reader of the record
19 would need to know.

20 MS. DUARTE: -- in Knoxville, you know, I need to have an
21 opportunity to confer with counsel for Knoxville. I'm here
22 right now and I can tell you that the Excel sheet that Mr.
23 Gaudioso is referring to is not currently in the record.

24 So I don't know what argument he's trying to make on
25 cross, because it's not a part of this case.

1 HEARING OFFICER POWELL: Okay. All right. This -- you
2 are going to -- we're going to take a two minute or a five
3 minute break. You are going to find out from Ms. Markey or
4 whomever if my -- if that is accurate or not, that there were
5 two methodologies used in the previous case. That's all I need
6 to know. That is all I need to know.

7 My assumption based on the conversation with the parties
8 was that the methodologies were used, the same methodologies
9 that were used in the previous cases were used here, but I'm
10 hearing that now that that may not be the case. That's what I
11 need confirmation of.

12 Ms. Markey, you're muted. You're still muted, Ms. Markey,
13 I'm sorry.

14 (Pause)

15 HEARING OFFICER POWELL: Ms. Markey, can you hear me?

16 Now, we're having trouble with you that we had with Mr.
17 Gaudioso. All right.

18 All right. Off the record until we get this sorted, Tom.

19 (Paused at 4:50 p.m.; reconvened at 4:53 p.m.)

20 HEARING OFFICER POWELL: On the record. All right. Go
21 ahead, Ms. Markey.

22 MS. MARKEY: I was confirming when we were off the record,
23 but now on the record confirming that I was not one of the
24 attorneys either who was involved with the preparation for or
25 the hearing at Knoxville.

1 We don't believe it's appropriate to get our attorneys
2 from Knoxville to be able to testify as to what methodology was
3 or was not consistent between Knoxville and Hopewell. None of
4 our attorneys who worked on Knoxville were involved with the
5 assistance or preparation of the expert testimony with Dr.
6 Turner here.

7 We think that she has answered the question and we
8 understand Mr. Gaudioso might not like the answer, we
9 understand, Mr. Powell, that you may believe that the
10 methodology was, in fact, not the same. I think there's still
11 a fundamental misunderstanding about what was not the same or
12 the same between the two proceedings that's different than what
13 the quote/unquote methodology was used, so we would like to
14 aide you in reconciling whatever, you know, issues you have
15 with comparing the two, to the extent we have it incorporated
16 in the record.

17 But we've incorporated the record, that doesn't mean that
18 we can just pull and assume things in the record and ask
19 questions about them without establishing a foundation. And I
20 don't understand any foundation that's been established here to
21 make a statement or a comparison about the methodology that
22 can't be answered by Dr. Turner.

23 HEARING OFFICER POWELL: Okay. Here's a point, going into
24 this and everybody in our region and myself, there was an
25 understanding, a stipulation that we all signed and agreed to

1 that the methodology of this would be the same, that was used
2 in the previous case. We recognize that understanding.

3 Now, for whatever reason no one -- it was not clear to me
4 and it was not clear -- it certainly wasn't clear to me, I
5 don't know if it was clear to Mr. Gaudioso so I can't speak --

6 MR. GAUDIOSO: It was not.

7 HEARING OFFICER POWELL: -- but it certainly wasn't clear
8 to me that perhaps Ms. Turner used one way of doing an analysis
9 and that the other witness did another way of doing the
10 analysis. I don't know. And that's what I'm trying to get to.
11 Is that the case, yes or no, I don't know.

12 You want me to and the reader of the record to look back
13 at the previous records at Knoxville and the other cases, use
14 those examples, use that data from there, but you're now
15 telling me well they may have used a different method than what
16 Dr. Turner is using here.

17 MS. MARKEY: Mr. Powell, there was -- I think there's some
18 confusion about the witnesses comparing here. We're not asking
19 for anybody to rely on nor has there ever been anything
20 introduced before Mr. Gaudioso's recent question about Eli
21 Hannah. Eli Hannah is the individual who pulls the data from
22 Starbucks.

23 We, in order to address the union's concerns about
24 repeating evidence and testimony, we reached a stipulation with
25 Mr. Gaudioso about what Eli Hannah did in this case, that was

1 what was introduced, Mr. Powell, this morning, the language
2 agreed upon.

3 But Mr. Hannah is not the equivalent of Ms. Turner. He is
4 a Starbucks employee that pulls the data. What Mr. Gaudio is
5 asking about is what Mr. Hannah testified about in the prior
6 proceeding. He has not testified here. We stipulated to the
7 data that he had pulled in those exhibits. Ms. Turner is a
8 different witness, she is the expert, relying upon the data
9 pulled by Starbucks.

10 So to compare what Mr. Hannah did in the prior proceeding
11 with what Ms. Turner did here, that's what Ms. Duarte was
12 referring to was apples and oranges. That's not a difference
13 in methodology. I don't think there's been any difference in
14 methodology established here from any fact witness, other than
15 from Mr. Gaudio's questioning.

16 Ms. Turner -- Dr. Turner has stated that the methodology
17 is the same.

18 HEARING OFFICER POWELL: So she used the same methodology
19 in both cases, correct?

20 MS. MARKEY: Yes, that is how she has testified and that
21 is our understanding.

22 HEARING OFFICER POWELL: Okay. And now Mr. Hannah who is
23 an employee of Starbucks is not an employee of Charles River.

24 MS. MARKEY: Correct.

25 HEARING OFFICER POWELL: Okay. And he did an analysis and

1 presented evidence in that case, in the previous case, whatever
2 region that is, I forgot; is that correct?

3 MS. MARKEY: Yes. He and his team pulled the data, the
4 data -- I don't know the exact titles, they pulled the data
5 from Starbucks, they're Starbucks employees. And so he had
6 testified previously, but in this action, we reached
7 stipulation about what he did and what he pulled and what Dr.
8 Turner relied upon.

9 I believe that's also been done in some other hearings
10 since Knoxville, again trying to expedite things. But again,
11 we want to help, Mr. Powell, you understand and to the extent
12 Mr. Gaudioso has an argument that I'm not really sure we
13 understand, but just saying that there's some different
14 methodology doesn't make it true. Dr. Turner is the only one
15 who can testify to that in this proceeding and she has, and
16 said the methodology was the same.

17 Certainly Mr. Gaudioso is entitled to further questions on
18 that, and if he wants to more specifically bring in other
19 pieces of evidence he thinks, you know, attacks that
20 credibility he's more than welcome to do so, but just saying
21 that we're relying on and incorporating the massive records
22 from the prior proceedings doesn't establish the foundation for
23 that question, much less that premise that the methodology is
24 different.

25 That's the base level, Mr. Powell, and I'll give it back

1 to Ms. Duarte, I just wanted you to understand because I know
2 there was some confusion this morning with the last minute
3 stipulations, the nature of Eli Hannah being the Starbucks
4 employee who pulls the data that Dr. Turner subsequently relies
5 on. And that is very different and why just because of what
6 Mr. Gaudioso is asking about with Eli Hannah's data doesn't
7 mean that Dr. Turner has changed her analysis or methodology.

8 HEARING OFFICER POWELL: Well, I think the question was
9 there was some type of discrepancy between the two. And my
10 understanding, what I was trying to get at, was my
11 understanding was that the methodology was the same. But
12 you're telling me the methodology may not have been the same.

13 MS. MARKEY: I am not saying that at all. I am explaining
14 the differences in the witnesses and saying that you can't
15 compare what Eli Hannah did in another proceeding to what --
16 the only information and evidence we have that has been
17 admitted in this proceeding is the stipulation as to the data
18 that Eli Hannah pulled.

19 So to compare what Dr. Turner has said with what Eli
20 Hannah, the Starbucks data person, not the expert, not the
21 analyst did in another proceeding doesn't -- even if it's true,
22 create a difference in methodology in what Dr. Turner or what
23 Charles River did between the two proceedings.

24 What Charles River has done as an expert in analyzing the
25 data is not the same thing as what Starbucks has done in

1 pulling the data. To the extent Mr. Gaudioso has an issue with
2 how the data was pulled here or how the data was relied on, we
3 need to first revisit the stipulation and we need to -- he can
4 ask questions of Dr. Turner but there's no foundation
5 whatsoever for the questions he's asked that's presumed upon a
6 difference in methodology between two different witnesses that
7 are not expert witnesses that are analyzing the same thing.

8 MR. GAUDIOSO: What was presumed, Mr. --

9 HEARING OFFICER POWELL: Okay. All right.

10 MR. GAUDIOSO: I'm sorry.

11 HEARING OFFICER POWELL: All right. Mr. Gaudioso, go
12 ahead.

13 MR. GAUDIOSO: What was presumed is that in an effort to
14 streamline these proceedings and to avoid duplication we were
15 first -- that you would first take administrative notice of the
16 record in the prior proceedings, which you have done.

17 And my understanding of what we were stipulating to was
18 that this may be the documentation with regard to Hopewell and
19 District 761 but that it would be consistent with the data
20 that's been provided in all of the other cases. Now, we're
21 finding out that's not the case.

22 HEARING OFFICER POWELL: You have to explain what you mean
23 consistent with the data that -- consistent with how the data
24 was pulled, consistent with how it was analyzed, you have to
25 say that, you have to state that, Mr. Gaudioso.

1 Off the record please.

2 (Paused at 5:02 p.m.; reconvened at 5:10 p.m.)

3 HEARING OFFICER POWELL: After a lengthy off the record
4 discussion the parties discussed the issue of the documentary
5 evidence that was put forth in the R case hearing in the
6 Knoxville Region. The employer has put in that case, put in an
7 analysis that was done by Dr. Turner in Knoxville and evidence
8 that was put on by its employee Mr. Hannah, an analysis done by
9 Mr. Hannah in Knoxville.

10 The parties had agreed that the region in this case, the
11 reader of the record in this case would take administrative
12 notice of that -- of all the analysis and documents put in the
13 other R cases, including that in Knoxville and which includes
14 the analysis and documentation put in by Mr. Hannah.

15 The employer has stated that in Hopewell, in the instant
16 petition it is not putting on similar information that was done
17 by Mr. Hannah, and is not going to put in documents or an
18 analysis for Hopewell that it did in Knoxville that -- from Mr.
19 Hannah.

20 The reader of the record will -- it should be noted by the
21 reader of the record that that information is not being
22 presented by the employer in this instance and should -- and
23 that should be given its proper weight and -- during the
24 analysis of this matter.

25 All right. With that in mind, Mr. Gaudio, you may

1 continue.

2 MR. GAUDIOSO: Actually, can you just give me one moment
3 so I can see where I was.

4 HEARING OFFICER POWELL: Sure.

5 MR. GAUDIOSO: Thank you.

6 (Pause)

7 HEARING OFFICER POWELL: All right. Off the record until
8 he comes back please.

9 (Paused at 5:13 p.m.; reconvened at 5:15 p.m.)

10 HEARING OFFICER POWELL: Back on the record.

11 BY MR. GAUDIOSO:

12 Q Dr. Turner, does your analysis provide any indication how
13 long any given borrowed partner is -- remains in a -- in the
14 store that they're doing the borrowing into?

15 A No, it only looks at whether they show up there or not.

16 Q Okay. And you were present -- well, I'm sorry, were you
17 present for Mr. Thibedeau's testimony?

18 A I don't know who that is.

19 Q Scott. Were you present for the last witness' testimony?

20 A I was -- I came in while the last witness was on.

21 Q Okay.

22 A I didn't --

23 HEARING OFFICER POWELL: I will note that Dr. Turner came
24 in for about maybe the last ten minutes of that testimony, I
25 did note that.

1 MR. GAUDIOSO: Okay.

2 THE WITNESS: I didn't see his name.

3 BY MR. GAUDIOSO:

4 Q Does any of your analysis indicate whether the employees
5 that were -- that worked in another store other than their home
6 store did so voluntarily?

7 A No.

8 Q Okay.

9 MR. GAUDIOSO: I don't have any other questions at this
10 time for Dr. Turner.

11 HEARING OFFICER POWELL: Okay. Dr. Turner, you don't know
12 how many employees were District 761 when you did your
13 analysis?

14 THE WITNESS: It is my underlying data, but I don't know
15 off the top of my head.

16 HEARING OFFICER POWELL: Okay. So that was factored in?

17 THE WITNESS: Well, the counts of employees go into, for
18 example, the pie chart.

19 HEARING OFFICER POWELL: Uh-huh.

20 THE WITNESS: So underlying the pie charts are counts of
21 employees who work in those stores, for example, so yes, it
22 goes into the analysis but I don't have, for example, an
23 analysis that shows -- well, I suppose the one that shows the
24 active partners shows how many are currently active on the home
25 store roll. But like I said, I don't know off the top of my

1 head how many are in the district or in the data overall.

2 HEARING OFFICER POWELL: Okay. Now, in your analysis when
3 you said like there was -- I forgot which exhibit it was now,
4 when you said there was 572 days, something like that transfer
5 days or --

6 THE WITNESS: Yes.

7 HEARING OFFICER POWELL: -- I forgot the exact terms, that
8 took -- did that take into account the number of individuals in
9 the entire district working at that time?

10 THE WITNESS: I think what you're talking about is a
11 footnote.

12 HEARING OFFICER POWELL: Yes.

13 THE WITNESS: On the chart that shows the average five day
14 of the year.

15 HEARING OFFICER POWELL: Uh-huh.

16 THE WITNESS: And that raw number is just the numerator or
17 the top top part of the fraction that creates the percentage
18 that was the red dotted line. So the average number of person
19 shifts that are borrowed during the period.

20 So, for example, I'm looking at page 48 of one of the
21 exhibits and it says 291 partner days were borrowed and that
22 the average was .9 percent of partner days. So to get the .9
23 percent, you put the 291 on top and then divide by the overall
24 number of partner days that are in the data. I think that
25 answers your question.

1 HEARING OFFICER POWELL: Okay. And so that -- right. So
2 that would give you -- so that number -- by doing the reverse,
3 you'd basically get --

4 THE WITNESS: Yes.

5 HEARING OFFICER POWELL: -- the number of employees,
6 correct?

7 THE WITNESS: No, you would get the number of person days
8 in the data.

9 HEARING OFFICER POWELL: Okay. Person days in the data.

10 THE WITNESS: Yes.

11 HEARING OFFICER POWELL: Can you explain what a person day
12 is?

13 THE WITNESS: Yes. So that's just a record in the
14 aggregated data. So the aggregated data has a person number, a
15 work store, a home store, a date, and I think it has the number
16 of hours.

17 HEARING OFFICER POWELL: Okay. And is the person --

18 THE WITNESS: So that's what I'm calling a person day
19 because it's my understanding is that that's the aggregation,
20 so they've aggregated the hours up to that level.

21 HEARING OFFICER POWELL: Okay.

22 THE WITNESS: And that --

23 HEARING OFFICER POWELL: What I'm trying to get to is, and
24 forgive me, but the person data, is that one person or does
25 that represent several people?

1 THE WITNESS: It's one shift that a person worked. So --

2 HEARING OFFICER POWELL: Okay. So --

3 THE WITNESS: -- it's like one person shift or one day
4 that one person went in to work.

5 HEARING OFFICER POWELL: Okay. So it's one person for
6 that one shift.

7 THE WITNESS: For that one day, yeah. And that one person
8 can be in there every day for the whole period or just for a
9 few days.

10 HEARING OFFICER POWELL: Okay. All right. That's what I
11 wanted to get to. All right. Does your -- the -- I think
12 before you said does that include or was there a factor, was it
13 factored in your analysis when a person who let's say wants an
14 extra shift, so they volunteer to go to a different store to
15 get an extra shift, so they may have completed their shift at
16 their day but they want extra hours or part-time hours, so they
17 volunteer to go to another store to get that hour. Is that
18 reflected?

19 THE WITNESS: There's no indication of whether the shift
20 was -- why they worked the shift. I only see what shifts were
21 worked and where they were.

22 HEARING OFFICER POWELL: Okay. So there's no difference
23 then -- all right, okay, no, that's fine. It doesn't explain -
24 - it didn't explain why that person worked that shift.

25 THE WITNESS: Right.

1 HEARING OFFICER POWELL: All right. That's it, I have
2 nothing further. Ms. Duarte.

3 MS. DUARTE: Just a quick follow-up question, two or
4 three, Dr. Turner.

5 REDIRECT EXAMINATION

6 BY MS. DUARTE:

7 Q So we have in Employer Exhibit 22-A, I just want to
8 confirm that when you were referring to the transfer analysis,
9 the analysis that excludes -- that includes only those
10 employees that have one designated home store is on pages 29
11 through 35; is that correct?

12 A Yes, that's correct.

13 Q Thank you. And the analysis that includes the shifts that
14 were worked pre and post transfers, that's on pages 22 through
15 28 of Employer Exhibit 22-A?

16 A Yes, that's right.

17 MS. DUARTE: Okay. No further questions at this time.

18 MR. GAUDIOSO: Just a couple of follow-up.

19 RECROSS-EXAMINATION

20 BY MR. GAUDIOSO:

21 Q Dr. Turner, the data that you analyzed, where'd you get
22 it?

23 A It was provided to me by counsel.

24 Q Okay. Do you know how the data was collected from
25 Starbucks?

1 A I don't really have a good idea of how it was collected,
2 no, just that they have a data team that pulled the data for
3 us.

4 HEARING OFFICER POWELL: I'm sorry, for some reason I got
5 kicked out. So was everyone on, did everyone -- was that --

6 MR. GAUDIOSO: Yes.

7 HEARING OFFICER POWELL: Okay. All right. Go ahead, Ms.
8 Duarte, I'll --

9 MR. GAUDIOSO: No, we're on recross, Mr. Powell.

10 MS. DUARTE: Yeah, but if you missed my redirect, I'd like
11 an opportunity to ask the question again.

12 MR. GAUDIOSO: It'll be in the record.

13 HEARING OFFICER POWELL: Yeah, I missed the last question
14 that I heard was when you asked about -- a question about page
15 22, I guess to 28, that was the last question I heard. Did you
16 ask anymore after that?

17 MS. DUARTE: No, that was my last question.

18 HEARING OFFICER POWELL: Okay. All right. Go ahead, Mr.
19 Gaudioso.

20 MR. GAUDIOSO: Okay. And just to advance things from
21 here. I'd asked Dr. Turner where she got the data that she
22 analyzed. She indicated she got it from counsel. And I think
23 I followed up with, did she know how the data was collected by
24 Starbucks. And I don't --

25 BY MR. GAUDIOSO:

1 Q Dr. Turner, I don't want to put words in your mouth, but
2 you weren't sure, correct?

3 A Right, I only have a general understanding that they have
4 a data team that pulls it for us.

5 Q Okay. What type of data did you look at?

6 A Well, the data that we looked at were aggregated data, so
7 that's what I was describing earlier which has a person number,
8 a work store, a home store, a date and an amount of time that
9 was worked. And then I looked at what's called the partner
10 listing and that has the person ID and the home store number
11 and the hire date, the most recent hire date and the
12 termination date. And then I looked at the store listing, so
13 that's the list of all the stores in the district.

14 Q Okay. Was this data compiled on a daily basis, weekly
15 basis, monthly basis, annual basis?

16 A For the aggregated data our -- I guess the aggregated data
17 are on the daily level, and I guess I'm not sure exactly what
18 you mean by compiled. Do you mean that like what's the
19 observation level or --

20 Q Well --

21 A -- when was it pulled?

22 Q Yes. Well, for the information that you had from -- that
23 was compiled by Starbucks --

24 A Uh-huh.

25 Q -- was it broken down by individual stores?

1 A So the aggregated data is by those things that I told you,
2 so it's unique by person, work store, home store, date and
3 number of hours. So it's a lot of rows of data and it
4 represents each length of time that a person was working in a
5 store in the district is my understanding.

6 Q Okay.

7 A The partner listing, my understanding is that that's
8 current. So that's saying anybody who's currently worked in
9 the district or terminated employment while working in the
10 district is on that list and there's one record per person.
11 And then the store listing is just one record per store and it
12 just says store number whatever is called this number and they
13 opened this date and they closed this date.

14 Q Okay. Was there any data provided to you that isolated
15 total shifts per store in District 761?

16 A Not specifically, no.

17 Q Okay. Was there any data provided to you that isolated
18 borrowed shifts per store for all the stores in the district?

19 A No, not specifically.

20 Q Was there any data provided to you that indicated the
21 total hours of -- total hours worked by all partners in each
22 individual store for District 761?

23 A Not specifically.

24 Q When you say not specifically, what do you mean?

25 A I mean I could use the data to calculate those things, but

1 I didn't and those calculations were not given to me.

2 Q But you could have analyzed --

3 (Audio goes out on Mr. Gaudioso at 5:29:53 p.m.)

4 Q -- those terms?

5 A I'm sorry, you broke up, can you --

6 HEARING OFFICER POWELL: You broke up, Mr. Gaudioso, can
7 you repeat?

8 MR. GAUDIOSO: I'm sorry.

9 THE WITNESS: Can you repeat what you asked, please?

10 MR. GAUDIOSO: I'm sorry. Could that question just be
11 reread because --

12 THE REPORTER: All right. Give me a couple of minutes,
13 let me see if I can do it. Off the record.

14 (Paused at 5:30 p.m.; reconvened at 5:32 p.m.)

15 HEARING OFFICER POWELL: Mr. Gaudioso, why don't you hold
16 on. Tom, if you can play it again and just --

17 (Paused)

18 BY MR. GAUDIOSO:

19 Q So, Dr. Turner, did you have data that provided -- Dr.
20 Turner, did you have data that would indicate the total hours
21 worked in each store in District 761?

22 A I could have calculated those given the data, but the raw
23 data allowed for that calculation, but I wasn't given that
24 calculation.

25 Q But you could have calculated -- you could have figured

1 out the total hours worked in any given store for any given
2 time period, correct?

3 A Not -- well, any given time period covered by the day.

4 Q Yes, of course, covered by the day.

5 A It's possible to calculate that with those data.

6 Q Okay. Did you have data that gave you an indication of
7 the borrowed hours for each store in any given year?

8 A The data would allow that to be calculated again, but I
9 did not calculate it.

10 Q But you did not, okay.

11 Is there a reason that you did not?

12 A We analyzed things on other dimensions than based on
13 hours, we looked at days, we looked at partner days, we didn't
14 look at hours.

15 Q Did you have -- so would you have been able to calculate
16 the percent of shifts borrowed for any given store in any given
17 year that is in the relevant time period?

18 A We would have been -- I do think you could calculate that
19 with those data sets.

20 Q Okay. And could you also calculate the percent of hours
21 borrowed in any given store for any given year in the relevant
22 time period?

23 A Yes.

24 Q So you essentially could have done the same analysis that
25 Mr. Hannah did Mr. Knoxville, correct?

1 A I haven't seen Mr. Hannah's -- I haven't seen it.

2 Q I'll withdraw that question.

3 HEARING OFFICER POWELL: Yes.

4 Q So you could have provided -- you could have done such an
5 analysis, is that your testimony?

6 A The data allowed for it.

7 MS. DUARTE: Mr. Powell, I'm going to object again because
8 she just said she hasn't seen the analysis. So if the question
9 is, you could have performed that analysis, there's no
10 foundation.

11 HEARING OFFICER POWELL: No, no, he --

12 MR. GAUDIOSO: She just admitted that she could.

13 HEARING OFFICER POWELL: Hold on. He withdrew the
14 question where he specifically related it to Mr. Hannah, which
15 you know, is a correct withdrawal of that question. He then
16 moved on and asked just generally could you have done that
17 analysis, which is a slightly different question, so I am going
18 to allow him to like ask that question and see if she could
19 answer, because it's not related to Mr. Hannah's work, it's
20 related to whether she had the information that could have done
21 that analysis.

22 THE WITNESS: I'm sorry, when I was answering the question
23 I thought you were asking if I could have done all of those
24 things that you asked me about prior.

25 BY MR. GAUDIOSO:

1 Q Yes, yes.

2 A And I was just confirming that, yes, I could have done --
3 the data allowed for me to have done those calculations if that
4 were part of my analysis.

5 Q So you had the data to perform that analysis, you just
6 didn't perform that analysis.

7 A I didn't do that analysis, but I do believe you could --

8 Q But you have the data --

9 A -- do those calculations with those data.

10 Q Is there a reason you didn't do that sort of analysis?

11 A Well, we did seven sets of analyses times seven, and we --
12 I mean, at any point, you can do more analyses, right, you can
13 add more and more. But these were the ways that we had thought
14 to picture these data starting in Buffalo and I said that we've
15 done the same analysis since then, and we've added to them, but
16 we haven't subtracted from them.

17 Q Well, not to fight you, Doctor, but overall Starbucks has
18 subtracted from the analysis. They didn't provide the analysis
19 of --

20 MS. DUARTE: Objection, that's a mischaracterization of
21 the record. The record has been clear and Ms. Turner has
22 followed the same methodology.

23 HEARING OFFICER POWELL: All right. Yeah, Mr. Gaudio.

24 MR. GAUDIOSO: I'm not going to argue with the witness.

25 All right. I think I'm done, thank you. Thank you, Dr.

1 Turner.

2 HEARING OFFICER POWELL: All right. I don't have anything
3 further. Ms. Duarte, do you have anything further?

4 MS. DUARTE: Nothing further.

5 HEARING OFFICER POWELL: Okay. All right. Thank you, Dr.
6 Turner. Why don't -- well, we're going to be done for the day
7 obviously. Does anyone -- we're set to go consecutive days.
8 Are we -- 10 o'clock tomorrow morning is fine?

9 MR. GAUDIOSO: Yes.

10 HEARING OFFICER POWELL: Okay. All right. I believe -- I
11 will -- I believe that the same Zoom link will work tomorrow.
12 I will try -- if not, then I will get everybody a new link
13 tomorrow morning, but it should work tomorrow.

14 MR. GAUDIOSO: Mr. Powell, I'm sorry, I would like to send
15 my witness e-mail addresses to you. I probably won't do it
16 until tomorrow, but so you can send them their links as well.

17 HEARING OFFICER POWELL: Sure. Actually if everyone could
18 hold on right now, as a matter of fact, why don't I just do
19 this, why don't I just send everyone a new Zoom link for
20 tomorrow. So that way, there is no issue.

21 MR. GAUDIOSO: I just don't think I can forward it.

22 HEARING OFFICER POWELL: No, who is your -- yeah, if you
23 cut and paste to your e-mail you can forward it.

24 MR. GAUDIOSO: Okay.

25 HEARING OFFICER POWELL: All right.

1 MR. GAUDIOSO: I'll do that.

2 MS. MARKEY: We're off the record, right, Mr. Powell?

3 HEARING OFFICER POWELL: Yes, Tom, are we off the record?

4 THE REPORTER: We are not.

5 HEARING OFFICER POWELL: Oh, please, off the record.

6 (Paused at 5:39 p.m.; reconvened at 5:43 p.m.)

7 HEARING OFFICER POWELL: All right. We're ending for the
8 day, if there's nothing further, then I will see everybody
9 tomorrow morning at 9:30. I've sent everyone a Zoom link. So
10 everyone have a good night. Ms. Duarte, if I don't see you, I
11 just want to say you're very good -- you were very good today.
12 So that was actually one of the better hearings, so thank
13 everyone for today. It's been good. So everyone have a good
14 night. All right.

15 MS. DUARTE: You were good, too, don't worry, we were both
16 good. Thank you, Mr. Powell, and good luck.

17 HEARING OFFICER POWELL: Thanks, bye-bye.

18 MR. GAUDIOSO: Thank you.

19 (Proceedings concluded at 5:44 p.m.)

20

21

22

23

24

25

CERTIFICATION

This is to certify that the attached proceedings before the National Labor Relations Board (NLRB), Region 22, in the matter of STARBUCKS CORPORATION, Case Nos. 22-RC-288780, via Zoom, on February 2, 2022, was held according to the record, and that this is the original, complete, and true and accurate transcript that has been compared to the recording from the hearing, that the exhibits are complete and no exhibits received in evidence or in the rejected file are missing.



Mary E. Dring, CER

**OFFICIAL REPORT OF PROCEEDINGS
BEFORE THE
NATIONAL LABOR RELATIONS BOARD**

In the Matter of:

Case No.: 22-RC-288780

STARBUCKS CORPORATION

Employer

And

WORKERS UNITED

Petitioner

**Place: Via Teleconference
Date: 02/03/22
Pages: 190-379
Volume: 2**

OFFICIAL REPORTERS

**Veritext
Mid-Atlantic Region
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Philadelphia, PA 19103
215-241-1000**

BEFORE THE

NATIONAL LABOR RELATIONS BOARD

-----: Case No.:
 In the Matter of: 22-RC-288780
 STARBUCKS CORPORATION, :
 Employer, :
 And :
 WORKERS UNITED, :
 Petitioner. :
 -----:

The above-entitled matter came on for hearing via Zoom
 Pursuant to Notice, before Hearing Officer HENRY J POWELL, at
 the National Labor Relations Board, Region 22, via Zoom
 Thursday, February 3, 2022, at 9:30 a.m.

A P P E A R A N C E S

On Behalf of the Employer (Starbucks):

NINA K. MARKEY, ESQ.

MARIE DUARTE, ESQ.

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On Behalf of the Petitioner (Workers United):

DAVID GAUDIOSO, ESQ.

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Dgaudio@meranzekatz.com

I N D E X

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS	VOIR DIRE
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Jen Pivarnik	194	243	263	--	--
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Sara Mughal	275	298	308	315	--
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Hailey Kenney	320	328	--	--	--
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Misty Knight	331	349	367	373	
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E X H I B I T S

EXHIBITS

IDENTIFIED

RECEIVED

EMPLOYER'S

E-17

200

201

E-18

229

235

E-19

238

242

P R O C E E D I N G S

(Time Noted: 9:36 a.m.)

COURT REPORTER: We're on the record.

HEARING OFFICER POWELL: All right. Ms. Markey, you may continue. You have a next witness to call?

MS. MARKEY: I do. The Employer calls Jen Pivarnik.

HEARING OFFICER POWELL: All right. Ms. Pivarnik, can you raise your right hand, please?

Whereupon,

JEN PIVARNIK

Having been first duly sworn, was called as a witness and testified herein as follows:

HEARING OFFICER POWELL: Okay. Could you state your name and spell your last name, please?

THE WITNESS: Sure. Jen Pivarnik, P-I-V-A-R-N-I-K.

HEARING OFFICER POWELL: All right. Ms. Markey?

MS. MARKEY: Thank you.

DIRECT EXAMINATION

BY MS. MARKEY:

Q Good morning, Ms. Pivarnik. Is it okay if I call you Jen?

A Yes.

Q Are you currently employed?

A Yes.

Q Where?

A Starbucks Coffee Company.

1 Q How long have you worked for Starbucks?

2 A Over 21 years.

3 Q What is your current position with Starbucks?

4 A Regional Director.

5 Q And how long have you held that title?

6 A Five years.

7 Q And what was your title immediately preceding that?

8 A I was a Licensed Store Director for a limited time
9 assignment.

10 Q And how long were you a Licensed Store Director? How long
11 was that limited assignment?

12 A I was about three months.

13 Q And what was your title immediately preceding that?

14 A A Licensed Store District Manager.

15 Q And just briefly what -- are there any differences -- are
16 you currently working in a licensed store position?

17 A I am not.

18 Q And are there any differences between the stores that you
19 currently work with as Regional Director and licensed stores?

20 A Yeah. So our licensed stores are not corporately owned.
21 We work with different partnerships to expand the brand in
22 different venues.

23 Q Who do you currently report to in your position as
24 Regional Director?

25 A Tracey Gaven-Bridgman.

1 Q And what are your general responsibilities as Regional
2 Director?

3 A So it's really to develop my District Manager team, to be
4 able to take care of our store partners, our customers, ensure
5 operations are to standard, and to grow the area, right? Grow
6 the market, expand the brand, open new stores.

7 Q Are you familiar with the Hopewell Store?

8 A I am.

9 Q How so?

10 A It's a store in my area.

11 Q And what is your area currently?

12 A Area 81. It's pretty much the top half of the State of
13 New Jersey, minus Hudson County and part of Edison area.

14 Q And is that area part of any larger organization within
15 the company?

16 A It is. We are part of region seven, which is New York
17 metro.

18 Q How many districts are there in area 81?

19 A There are nine districts.

20 Q Has that always been the case, or for the time period that
21 you've been Regional Director?

22 A No. We've added.

23 Q And how many were there when you -- do you recall, when
24 you first started as Regional Director, approximately?

25 A I believe eight.

1 Q And in the area that you talked about, that's included in
2 the New York metro, approximately how many locations are there
3 within the New York metro region seven?

4 A Approximately 500 some Starbucks. Yeah.

5 Q And in area 81, approximately how many stores are there?

6 A Approximately 115.

7 Q You said that your -- the New York metro includes the top
8 half of the State, minus Hudson County and the Edison area. Is
9 the bottom start of -- bottom part of the State in a different
10 area or region?

11 A Yes. The bottom part of the State is area 71, which is in
12 region eight, the northeast.

13 Q And do you have any responsibilities for that area or
14 region?

15 A None.

16 Q Do you have any interaction with that area or region?

17 A Very little. Just if, you know, I'm looking to connect,
18 or reach out our network, but not close to any of the
19 operations there.

20 Q And geographically, are any of the stores that are in the
21 different area and region in South Jersey, geographically close
22 to the stores that are in district 761?

23 A Sure. I mean we're a very densely populated state. So I
24 think the line, you know, just divides it up. But yeah, I
25 would say they're not super far away.

1 MS. MARKEY: If we could go off the record for a moment?
2 I just want to confirm, before I start referring to exhibits,
3 that everybody that was on the email did in fact receive three
4 exhibits; 17, 18 and 19?

5 HEARING OFFICER POWELL: All right. Off the record.

6 COURT REPORTER: We're off the record.

7 (Whereupon, a brief recess was taken)

8 COURT REPORTER: We're on the record.

9 HEARING OFFICER POWELL: All right. Ms. Markey?

10 BY MS. MARKEY:

11 Q Ms. Pivarnik, before we went briefly off the record, we
12 were talking about the different districts, and areas and
13 regions. And you had testified that you have multiple
14 districts that you are responsible for as Regional Director, is
15 that correct?

16 A Yes.

17 Q Do you have an understanding as to why is it that
18 Starbucks utilizes districts?

19 A Yeah. Based on having, you know, approximately 115
20 stores, there's no way that I could support that many managers
21 to teach, and coach, and take care of their partners. So I
22 need the support system of having those District Managers in
23 place, to be able to, you know, really assess individually,
24 Store Manager capability, be able to connect with hourly Shift
25 Supervisors, Baristas, to make sure that districts are staffed,

1 to make sure that they're operating to standard, and to make
2 sure that we're continuing, you know, to provide development
3 opportunities to our partners.

4 Q Who decides what stores will be in a district?

5 A I do.

6 Q How do you make that decision?

7 A It's based on geography.

8 Q And is there any role of headcount in the decisions, as to
9 what stores will be in a district?

10 A So me adding headcount or decreasing headcount, which
11 change the number of stores in a district. Typically what's
12 important to me is that, you know, typically I try to keep the
13 same County stores that are together, to the best of my
14 ability, while keeping a stand on average of about 12, give or
15 take a store, to be able to ensure that there's some
16 familiarity with the County and the area that district is in.
17 It's easier for the District Manager.

18 Q How many stores do you have on average right now, in each
19 of your districts?

20 A It's a little over 12. My span is a little over 12 each.

21 MS. MARKEY: I'm going to begin sharing my screen, to go
22 over with what is marked as Employer -- Starbucks Hopewell
23 Employer exhibit 17.

24 BY MS. MARKEY:

25 Q Jen, can you see the document that I have shared on the

1 screen?

2 A I can.

3 Q Can you tell me what this is?

4 A It is a map of district 761, with the stores that are
5 included in the district. I think they're purple.

6 (Employer's E-17 identified)

7 Q Okay. And are these the -- it looks like the purple
8 demarcations have different names next to them. Are these --
9 do you know what these names mean?

10 A They're the store names.

11 Q And it looks like the stores are relatively close
12 together, with the exception of one. The Deans Lane store
13 appears to be further north than the others. Is that accurate?

14 A That is accurate, yes.

15 HEARING OFFICER POWELL: There is also Hillsborough. Is
16 that part of the district as well? Way up --

17 THE WITNESS: It is.

18 HEARING OFFICER POWELL: -- to the top.

19 THE WITNESS: Yep.

20 HEARING OFFICER POWELL: Okay.

21 BY MS. MARKEY:

22 Q And why is it that the Hillsborough and Deans Lane stores
23 are in this district?

24 A Because even though they're a little further out from the
25 cluster of stores down the bottom, they still are in closest

1 proximity to get Scott, in this case, up to that 12 span.

2 Q So in this case, it wasn't just --

3 HEARING OFFICER POWELL: Ah.

4 THE WITNESS: You're sharing something else.

5 HEARING OFFICER POWELL: You're sharing something else --

6 MS. MARKEY: Oh.

7 HEARING OFFICER POWELL: -- Ms. Markey --

8 MS. MARKEY: Sorry. Thank you.

9 HEARING OFFICER POWELL: -- want to do that.

10 MS. MARKEY: No. That's why I don't like sharing the
11 documents. Okay. I'd like to move for the admission of
12 Employer exhibit 17.

13 HEARING OFFICER POWELL: Mr. Gaudioso?

14 MR. GAUDIOSO: No objection.

15 HEARING OFFICER POWELL: All right. So received.

16 (Employer's E-17 received in evidence)

17 BY MS. MARKEY:

18 Q So to the extent that the Deans Lane and Hopewell stores
19 are further out than the others within the district, were there
20 considerations other than geography, that caused you to put
21 those locations into district 761?

22 A No, it was just geography.

23 Q And when you said that you had those stores in the
24 location to bring Scott up to 12, what did you mean?

25 A So ideal District Manager spans in my area is

1 approximately 12. So most of my DMs have, you know, right now
2 anywhere from 11 to 13 stores. So including those two, even
3 though they're a little further out, were the closest to be
4 able to bring him to the 12 on average.

5 Q Have you ever needed to reevaluate the number of stores in
6 a District Manager's district?

7 A Yes.

8 Q And on what basis have you need to do that?

9 A Typically when I'm adding headcount, and I have to realign
10 the stores.

11 Q And when you say adding headcount, what do you mean?

12 A Adding a District Manager to my team.

13 Q And how do you look at the stores, or how do you then
14 change the number of stores in a district when that happens?

15 A So I'll take a look at geography. The number of stores.
16 And then like I mentioned prior, I do try to keep consistency
17 with the County, as there's going to be some similarities in a
18 district in a particular County.

19 For example, I have one district that requires in that
20 County, you know, for all our Shift Supervisors to be food safe
21 certified. That's not across the board in my area. So
22 sometimes there's particular County regulations that it's
23 easier. I try to stay consistent with the Counties and the
24 District Managers when I can.

25 Q And approximately how many partners work in district 761?

1 A A little over 300.

2 Q Do you expect -- or do DMs have any requirement to go into
3 their stores?

4 A Yes.

5 Q What are you expectations in that regard?

6 A So they should be visiting stores on a cadence, of every
7 like six weeks we have particular planning period visits that
8 occur, but also as needed to ensure that business operations
9 are running to standard, and that our partners, you know, have
10 a resource, right? And they're being spoken to about how
11 they're feeling, and you know, checking in on our partners, and
12 the customers of the business.

13 HEARING OFFICER POWELL: Ms. Pivarnik, is that for all
14 districts within your region?

15 THE WITNESS: so all districts within my region would have
16 that cadence of planning period. For me, I could speak to my
17 expectation as well, that a District Manager may have more
18 frequent visits, if the store need more attention. So --

19 HEARING OFFICER POWELL: Okay.

20 BY MS. MARKEY:

21 Q Do you expectations with regard to your DMs vary,
22 depending upon their district or circumstances?

23 A I'll work with a District Manager individually, if we have
24 a particular store or a couple stores that need a different
25 cadence of attention. But yes, ensuring that stores are, you

1 know, operating to standard and that they're full staffed, that
2 would be the same across all DMs.

3 Q Do you communicate with your DMs on any regular basis?

4 A I do.

5 Q How so?

6 A Typically, we have a weekly meeting or huddle, where we
7 get together. It's usually virtually. And then on a monthly
8 basis, we do partner planning meetings. We do our planning
9 period meetings. And then I also spend store time with them,
10 typically on a monthly basis.

11 Q What do you go over with your DMs in partner planning
12 meetings?

13 A So we're reviewing any needs or gaps. Anywhere we have
14 gaps Store Manager. And that we need -- either have a dual
15 Store Manager assignment, do we need a posting, where we are
16 filling that position? So really it's working as a team with
17 all my DMs to ensure that ideally we have no Store Manager
18 gaps.

19 And then we have pipeline. So we also review any ASMs
20 that are tracking towards being promoted to Store Manager. And
21 any Shift Supervisors that may be being developed into
22 Assistant Store Managers. So ensuring that our bench pipeline
23 is healthy.

24 Q Do DMs also --

25 HEARING OFFICER POWELL: I'm sorry, Ms. Pivarnik, I can't

1 hear you at this point. Am I the only one having this trouble
2 again?

3 MS. MARKEY: I believe so. I --

4 HEARING OFFICER POWELL: Mr. Gaudioso?

5 MR. GAUDIOSO: No. No, I -- we -- I can hear her just
6 fine.

7 MS. MARKEY: Jen --

8 HEARING OFFICER POWELL: All right.

9 MS. MARKEY: -- can you say something? Oh, sorry. Go
10 ahead.

11 THE WITNESS: Oh. Can you hear me now?

12 HEARING OFFICER POWELL: All right. Off the record.

13 COURT REPORTER: We're off the record.

14 (Whereupon, a brief recess was taken)

15 COURT REPORTER: We're on the record.

16 HEARING OFFICER POWELL: All right, Ms. Markey.

17 MS. MARKEY: Before going off the record, Jen, you were
18 telling us about how you communicate with your DMs. And you
19 had talked about having a weekly huddle, a monthly partner
20 planning meetings, planning the period, and then store visiting
21 with the DMs on a monthly basis. You then were telling us
22 about the partner planning meetings, and what you do during
23 those meetings.

24 And I believe you had heard the testimony of Scott
25 yesterday, at least in part. Are you aware that DMs hold

1 partner planning meetings as well?

2 A I am. It's an expectation.

3 Q Are those separate from the partner planning meetings that
4 you hold with DMS?

5 A Yes.

6 Q And what is your expectation, with regard to the partner
7 planning meetings that DMS hold?

8 A They should be doing similar things that I spoke about,
9 but at a district level. So for example they would be taking a
10 look at any Baristas that they feel are exhibiting -- you know,
11 advising behaviors in their role. They might be ready to move
12 to the next level and be promoted. Ensuring that also all of
13 the stores in the district are well staffed, with a number of
14 Shift Supervisors and Baristas. And talking about how talent
15 is tracking across the district, with their hourly partners.
16 They do it with their Store Managers.

17 Q Is there anyone other than DMS and Store Managers who
18 attend those partner planning meetings?

19 A Not typically. Potentially ASMs. Unless there was a
20 visitor, you know, not typically.

21 Q And all right. What are ASMs?

22 A Oh, Assistant Store Managers, or as it's really Store
23 Managers in training.

24 Q Why do you say that?

25 A Because it's not a stay-in-role position at Starbucks.

1 Q And what do you mean by not a stay-in-role position?

2 A They go through 30 days of training. And then we also
3 have about a six month plan to continue their development while
4 in a store. Soon as they are deemed ready to interview for a
5 Store Manager position, that would be the goal; is to get them
6 their own store. Typically, their in position for less than a
7 year.

8 Q Are there any other methods of communication that you
9 utilize with your DMs, other than the ones you've told us?

10 A I mean we use, besides like you know, phone, text, email,
11 we also have a workplace Facebook. So we have a work chat
12 function that we have a group, you know, the district leaders
13 on that work chat function, that I can communicate to all of
14 them. I can communicate to one of them. It's just not as
15 disruptive sometimes as like a text message.

16 Q And when you say that in the partner planning meetings
17 that you hold with DMs, that -- I'm sorry. When you were
18 talking about your expectations, with regard to the partner
19 planning meetings that DMs hold with the Store Managers, you
20 said that they are ensuring that all stores in the district are
21 well-staffed. What are your expectations, with regard to what
22 a DM should be doing, to make sure that stores in the district
23 are well-staffed?

24 A Yeah. So it would be ensuring the whole district, the
25 whole portfolio can, you know, be open at the hours of

1 operation to meet business demand. That will vary store by
2 store, based on just the business in the city or in the area
3 the store is in. But we should be able to be open fully, and
4 have the right amount of employees or partners as call them per
5 shift, to be able to handle that demand, and it'd still be a
6 good partner and customer experience.

7 Q And if the -- any of those things are not being met and
8 it's not well-staffed, what are District Managers empowered to
9 do to remedy that?

10 A Really anything that they need to do, right? So first, I
11 believe typically they're going to lead on the other stores in
12 the district, to see if we have anyone willing to transfer for
13 a short term, for a long term, to be able to cover shifts.
14 Then they're also empowered to put together job fairs, you
15 know, be able to advertise that we are actively hiring for the
16 district, and be able to decide based on availability where
17 those applicants or candidates, you know, would end up going.

18 Q How often -- are you familiar with who the current Store
19 Manager is for the Hopewell store?

20 A I am.

21 Q And who is that?

22 A Misty Knight.

23 Q And are you familiar with the DM currently for district
24 761?

25 A I am.

1 Q And who is that?

2 A Scott Thibedeau.

3 Q How often do you interact with Misty?

4 A So typically with Misty it's virtually. Usually on a
5 monthly basis, because she is also on the board of our partner
6 network, a woman's impact network, which I'm an executive
7 sponsor for as a Regional Director. So we typically are on
8 calls normally on a monthly basis, unless something is
9 canceled.

10 Q Are there any other ways that you interact with your Store
11 Managers more generally?

12 A Yeah. So on a -- about every six months, I have a Store
13 Manager round table per district. So that would be one way
14 that they typically would all attend that round table, all be
15 invited to that round table. And then --

16 MR. GAUDIOSO: My apologies. My computer froze again. If
17 we could pause for a moment, and I'll go into my conference
18 room, and just set up there? It should take maybe two minutes.

19 HEARING OFFICER POWELL: Okay. All right. I'm sorry, Ms.
20 Markey. All right. If we can just go off the record for about
21 two or three?

22 (Whereupon, a brief recess was taken)

23 COURT REPORTER: We're on the record.

24 HEARING OFFICER POWELL: All right. Ms. Markey?

25 BY MS. MARKEY:

1 Q Before the break, Ms. Pivarnik, we were talking about what
2 your cadence is for meeting with Store Managers. You had
3 talked a little bit about your meetings with Misty. And then
4 you were talking, I believe before we went off record, about
5 what you do more generally in meeting with the Store Managers.

6 And you talked about the round tables. Why is it that you
7 have round tables, I believe you said organized by district,
8 with your Store Managers? I'm sorry, scratch that. Are those
9 round table meetings that you talked about having with your
10 Store Managers organized by district you said?

11 A Yeah. So approximately every six months I will meet with
12 the Store Managers in a specific district in partnership with
13 my Partner Resource Manager, Tina McDonald. And we do that
14 really to be able to gauge the sentiment of the Store Manager
15 group in that district, to be able to get any feedback, provide
16 it back to the District Manager on things that's maybe on their
17 minds. Things that they could do differently. Or recognize
18 things that are going really well, and that the Store Managers
19 really like. So it's really to provide some actionable
20 feedback to the District Manager, based on the Store Managers'
21 feedback.

22 Q And what kind of feedback that you've gotten, that you've
23 shared with the District Manager from these round tables in the
24 past? Can you us some examples?

25 A Absolutely. It could be that the Store Manager team, you

1 know, want more, you know, recognition. Or there's ideas that
2 they have around maybe a district level Shift Supervisor
3 development program. So there's a lot of idea sharing and
4 feedback for the District Manager that come out of those
5 sessions.

6 Q You had also testified that you communicate with your DMs
7 via a workplace Facebook. Did I get that correct?

8 A Yes.

9 Q Who is it that you chat with, or who is in that chat on
10 the workplace?

11 A So I have several chats. I think it's an easy way to
12 virtually, you know, stay connected and then check in on
13 District Managers. I also use work chat function often with
14 Store Managers to check in. Say if I know that they were out,
15 you know, they were isolating for COVID for example. Or one
16 example I could think of recently in the past couple months, it
17 was actually for district 761, Scott was out of the business
18 for a little while. So I was able to create a group on that
19 work chat, on that workplace Facebook app, that I could
20 communicate to all the Store Managers in the district at the
21 same time, to just inform them on what's going on, and just
22 stay connected, while the District Manager was out.

23 Q And what kinds -- were there anythings that you can
24 recall, that you discussed with those Store Managers in the
25 district, while Scott was out? Any examples?

1 A Yeah. I mean typically it was checking in. It was based
2 on a particular event that happened in the district. So I
3 wanted to see how they were feeling, if they needed to talk.
4 If any of their partners were coming forward with any
5 questions. So I think it's really just staying as a support
6 system, to be able to stay connected with them.

7 Q Do you visit the store in district 761 yourself?

8 A I do.

9 Q How often do you do that?

10 A Typically once a month minimum.

11 Q How often have you visited the Hopewell store?

12 A In the past couple of months there's twice that I can
13 recall.

14 Q And what do you do on these visits?

15 A So the visit will be intentional based on the focus. You
16 know, it could be just popping in, right, to see, you know, how
17 it's going, how partners are doing. It could be informal like
18 that.

19 Or it could be more formal, where I'm with Scott for
20 example, for a different District Manager. And they might say
21 hey, we want to go in and work on this store team with
22 inventory practices, with how they're ordering. So we might do
23 an inventory help check the other, we might check in on some of
24 the processes. Be able -- I'm able to provide him feedback to
25 provide the store team feedback. So it really varies, based on

1 the intention of the visit.

2 Q Who determines the wages for the stores in district 761?

3 A Starbucks Corporate.

4 Q And how are those wages set, or how are they communicated
5 to you in what way?

6 A So typically like if there was a change for example, I
7 would be given a spreadsheet, and I'd be able to see minimum
8 and maximums based on start rate. So typically I have
9 visibility to that.

10 Q And when you say minimums and maximums, are those set on
11 pay scales?

12 A Yes.

13 Q Do you know how -- scratch that. Do you have different
14 pay scales within you're region?

15 A Within my area, yes.

16 Q And within your area, do the pay scales vary?

17 A Yes.

18 Q Is the pay scale the same for all of the stores in
19 district 761?

20 A I believe so, yes.

21 Q Is your -- are your District Managers able to change the
22 pay scales for their districts?

23 A They are not.

24 Q Are you able to change the pay scales for your area?

25 A No, but I can request a certain district or a certain part

1 of the area to be looked at.

2 Q Have you made such a request?

3 A I have.

4 Q And have you had such a request been granted?

5 A I have. I can share that. An example of that would be
6 earlier in the fall, I think it was September time frame, I had
7 taken a look at the stores that were closest proximity to New
8 York City. That is on different pay scale, a higher pay scale.
9 And had advocated, based on some of the partner feedback, and
10 also just knowing the geography, the cost of living, be able to
11 request a higher pay scale for the certain amount of stores
12 bordering New York.

13 Q Can DMs request a change in the pay scale for their
14 district?

15 A They can state an opinion, but they cannot submit a formal
16 request.

17 Q And who can they state that opinion to?

18 A Myself.

19 Q Have you had a District Manager request a change in a pay
20 scale for their district?

21 A I have.

22 Q How often has that happened?

23 A Probably monthly.

24 Q And have you granted such requests from the District
25 Manager?

1 A I definitely take their opinion into consideration.
2 They're closest to their district, which is typically, like I
3 mentioned earlier, the same geography. So they know what our
4 competitors are starting employees out with. They're just
5 closer to some of the decision making points, right, that we --
6 what would go into that request.

7 Q And whose -- when we talk about the pay scales, do you
8 recall what position it was that you've gotten requests from
9 the District Manager for an alteration or change in the pay
10 scale?

11 A It is usually our hourly partners, which includes our
12 Shift Supervisors and Baristas.

13 Q Are there ever company-issued wage increases?

14 A Yes.

15 Q And how do they happen?

16 A That typically is decided at Starbucks Corporate. And it
17 is -- then we are informed, and we're giving visibility. Like
18 I mentioned the spreadsheet earlier, typically we would see
19 what those changes would be, and then we would have that broken
20 down right by partner, by store, by district.

21 Q When there's company-issued wage increases, are they
22 uniform throughout districts within the district?

23 A They can be, yes.

24 Q Have there been differences in the company-issued wage
25 increases between the districts in your area?

1 A There would be. If our compensation team felt that there
2 was a certain geography or a certain district, right?

3 Typically it's the same district. That would maybe need a
4 market adjustment. So that can happen.

5 Q Do store level managers have the ability to change the
6 amount of any company-issued wage increase?

7 A They do not.

8 Q Do the District Managers have the ability to change the
9 amount of any company-issued wage increases?

10 A They do not.

11 Q You testified earlier about the partner planning meetings,
12 and talking with your DMs about staffing within the district.
13 Have you had a store close in one of the districts that's in
14 your area?

15 A Oh, yes.

16 Q What happens to the partners working in that store, when
17 it closes?

18 A So I can give you an example. Maybe that would be
19 helpful. Typically, if that -- if a store closes, say for a
20 renovation, typically when we're doing a whole renovation in a
21 store it's going to take anywhere from three to four weeks. We
22 build schedules out three weeks prior.

23 So we would be connecting -- it would be the expectation
24 the District Manager would be connecting with that Store
25 Manager and the partners, to see where they're commutable to,

1 and how they can pick up their hours in other stores. I
2 consider it our responsibility, that if we're closing a store,
3 the partners should be able to get their hours so they can get
4 paid and afford to live.

5 Q In that situation if the partners in the store that closed
6 want to get their hours, are they required to work in other
7 stores?

8 A I think it's a mutual conversation, that if there's a --
9 they -- if they wanted like paid time off, if they wanted to
10 use some time, vacation, they could do that. If they did want
11 to pick up hours, the DM would facilitate. You know, knowing
12 where they live, where they're commutable to, what their
13 transportation looks like. And it would be, I think, a joint
14 conversation, because we have to ensure that the store that's
15 housing them can give them the hours that they typically get
16 per week.

17 Q Have you ever had to close stores due to COVID isolations?

18 A Yes.

19 Q And what happens in that circumstances, with regard to the
20 partners working in that store, who aren't subject to
21 quarantine or isolation?

22 A Yeah. So those occurrences are more spur of the moment.
23 Obviously, they're not always planned or they're never planned.
24 We have isolations that happen. So we would check in with
25 partners and see, again, similar conversation; where are they

1 commutable to, where do they live, where could they pick up
2 hours? Like I said before, I think we always -- we try not to
3 penalize the partners that if we're having to close the store,
4 we want them to get their hours, so they can get paid.

5 Q And who works on that process?

6 A My expectation would be the District Managers working
7 directly with the Store Manager and the team.

8 Q And why is the District Manager involved in that process?

9 A Because the District Manager is responsible for managing
10 labor across the entire district. So they would have to be
11 part of that conversation to know what store, you know, might
12 have extra hours or be short staffed at that moment. Or, you
13 know, maybe they've been over in their hours that they're
14 earning in a store? And maybe that particular store can't
15 house more partners? So they would be the only one to be close
16 enough to it, and have that vantage point of the district, to
17 be able to support the Store Manager in allocating partners
18 other places to get their hours.

19 Q Are there any other reason other than staffing, that
20 partners need to be allocated or shifted between stores?

21 A Yes. I would say I see it. Sometimes we'll call it like
22 second store experience. But if there's a Shift Supervisors
23 for example that might be looking to promote into management.
24 Maybe they were only in a cafe store?

25 We know that, at least for my market, we're opening up

1 lots of drive-thrus. More drive-thrus opening up than cafes
2 right now. We might want them to have drive-thru experience.

3 That might be good for their development to learn that
4 operational piece. That's vastly different from a cafe.
5 Before maybe stepping into a management role, that could
6 essentially be a drive-thru.

7 So a lot of times District Managers will kind of move
8 partners around. And that's a conversation -- that's a mutual
9 conversation, right? Or transfer partners to a store for a
10 development opportunity, to experience something different.

11 HEARING OFFICER POWELL: Is that -- when you say talk to
12 the partners or whatever, is that -- so the partner has the
13 ability to refuse if they like? If they so choose?

14 THE WITNESS: Oh, yeah. If they don't want the
15 development opportunity, they don't have to. Sure.

16 HEARING OFFICER POWELL: All right. So it's not -- these
17 aren't situations that you've described earlier where the
18 decision was made that there has to be some time of
19 interchange?

20 THE WITNESS: Right.

21 HEARING OFFICER POWELL: Everything is voluntary?

22 THE WITNESS: Yeah. So the difference the store isn't
23 closing, right? So a different scenario. They would still
24 get their hours in their store. So they absolutely could
25 choose.

1 HEARING OFFICER POWELL: Okay.

2 BY MS. MARKEY:

3 Q If you have a Shift Supervisor -- an example you gave, a
4 Shift Supervisor looking for promotion into management, and
5 there's no other opportunity to do that in their store, do they
6 have any way of getting that promotional opportunity, other
7 than going to another store?

8 A No. And that's why we post. We ensure that all of the
9 postings now are visible, because a lot of times that is the
10 case; we don't have the Assistant Store Manager position, which
11 is that next step, from a Shift Supervisors internally to an
12 Assistant Store Manager. We do not have that in every single
13 store.

14 Q Do you know whether or not Store Managers have the ability
15 to schedule partners from other stores in their store?

16 A Yes. They can if they're a borrowed partner.

17 Q Have you opened stores in your area, since you've been in
18 your position?

19 A Yes. Lots.

20 Q What happens -- are you involved at all with the staffing
21 of that new store?

22 A I am not directly, no.

23 Q Who is?

24 A The District Manager.

25 Q Do you have any expectations with regard to the District

1 Manager and staffing or new stores?

2 A Yes. So typically one of the expectations I would have
3 would be that we try and open the store with at least half of -
4 - with more experienced partners. Like not newly hired for
5 that location. And the why behind that is because we feel it
6 helps bring the culture forward. You know, our coffee culture,
7 our service culture. We try to start with the foundation
8 that's not just completely brand new.

9 Plus operationally that would be challenging. So the DM
10 would facilitate that, right, by leading on -- talking with the
11 other store, other Store Managers, and seeing, you know, who
12 they may have that, you know, could transfer that lived closer
13 to that store, or you know, maybe they're ready to be a Shift
14 Supervisor, but there's not a position available in their
15 store, right? This could be an opportunity for them to get to
16 that, you know, over 50%, for opening that store with existing
17 partners from other stores.

18 Q To the extent you expect the DM to facilitate that, by
19 leaning on other Store Managers to see who they have that could
20 transfer to the new store, do you expect the DMs to ask
21 partners to transfer to the new store?

22 A Yeah. I think it should be a team sport. So I definitely
23 think, you know, the Store Manager has those conversations.
24 But I think the DM can too. They might have a different
25 perspective. Or there might be a brand new Store Manager in

1 that store, so the DM may be more experienced or well-suited to
2 have that conversation.

3 Q Do you have any involvement in hiring for new partners
4 within your districts?

5 A Only District Managers, not hourly partners.

6 Q And do you have any understanding as to -- or what's your
7 expectation for DMs, with regard to talking to partners about
8 their availability in other stores?

9 A So to me that should always be a conversation. I know I
10 hold my DMs accountable for their entire district being
11 staffed, not each individual store. So to me, like even I
12 mentioned earlier fair the job fair, right? Or any time that
13 might have a pod of Store Managers, you know, coming together
14 to interview together, right?

15 Just being able to recruit and hire people at a more
16 urgent pace, then that -- it should be hey, you may be asked to
17 work in other stores. Are you okay with that? The mentality
18 should be that we are hiring for the district for that
19 geography, and not just one store, because then we can't work
20 as a team to do all this, you know, problem solving with
21 staffing we may run into, or any of those things that come up.

22 Q And how many store openings have there been in your
23 district, since you have been in your position?

24 A I -- my area?

25 Q Yes, I'm sorry. I keep saying -- in -- within the

1 districts in your area. So within your area.

2 A Yeah. I don't -- I mean a lot. I -- typically, I would
3 say -- I could do the math quickly. It's about -- it's almost
4 10 stores. Anywhere from like six to 10 stores a year. I've
5 been here for five years. So probably about 50 to 60 stores
6 that I've opened.

7 Q And that's six to 10 stores on average per year in your
8 entire area?

9 A Correct.

10 Q Do you know approximately how many stores have opened up
11 in district 761?

12 A Since the past five years? Three, I believe.

13 Q And to the extent that you have a new store opening, who
14 decides who the Store Manager will be in that new store.

15 A The District Manager.

16 Q Why is that?

17 A Because they're closest to the talent. They do the
18 interviews with a peer, to be able to put the right leader in
19 that store. If they're transferring a Store Manager within
20 their district to the new store, it may be a Store Manager
21 that, like I mentioned before, same as hourlies, right, like it
22 might be a different opportunity; a drive-thru versus a cafe.

23 Might be projected to do higher sales. So we may want to
24 give a Store Manager a heightened opportunity for development
25 going to that new store. So they're closer to that than I

1 would ever be. So they decide, you know, whose the right
2 leader to open that new store.

3 Q Are you aware of discipline -- partner discipline that
4 occurs within your area?

5 A At what level?

6 Q Are there any levels that you're aware of partner
7 discipline that occurs within your area?

8 A Yeah. So typically I have visibility to most if not all
9 like written documentation or final written warnings with Store
10 Managers. I would say that only time I would have visibility
11 or be consulted on a Shift Supervisor or Barista, is if there
12 was a safety issue or something that had to happen really
13 quickly. And we might have to -- you know, I might have to
14 support like an executive decision at the moment, to be able to
15 remove that partner while pending investigation or to activate
16 my resources and Partner Resources. But typically I would not
17 be in the loop with all the hourly partner disciplinary
18 actions.

19 Q And to the extent that you are in the loop of the Store
20 Managers, who brings you into that loop?

21 A The District Manager.

22 Q To the extent there's those more rare occasions that
23 you've involved or in the loop on Shift Supervisor or Barista
24 discipline, who brings you into that loop?

25 A The District Manager.

1 Q Do you have any understanding as to even if you're not in
2 the loop, whether the District Manager is brought into the loop
3 with regard to any discipline issued by Store Managers to Shift
4 Supervisors or Baristas?

5 A They should be. I would say if you have maybe like a
6 Store Manager that we consider advising in the role, and it's a
7 black and white issue around dress code or time and attendance,
8 maybe not. But anything that's, you know, safety-based or, you
9 know, I think could be at a point where someone might lose
10 their job, right, like that type of situation that might occur,
11 then the District Manager should absolutely be informed. And
12 be part of, you know, consultation I think for what happens
13 with that partner with that Store Manager.

14 Q And do you know whether that impact happens in district
15 761, whether or not Scott is involved with the Store Managers
16 to the extent there's those, as you has said, higher level
17 discipline?

18 A Yes. I know that I know of a few.

19 Q Can you think of any examples where you were aware of
20 Scott being involved in discipline in district 761?

21 A Yeah. So I can think of we had a Shift Supervisor in a
22 store that there was, you know, a harassment concern, that we
23 were deciding you know, do we remove this Shift Supervisor,
24 while pending investigation? Would it be a liability or unsafe
25 in the store. So it goes -- those are -- that's one example

1 that I could think of that was around safety, and that's why it
2 was escalated.

3 Q In your position, do you review any data related to
4 business within your area?

5 A Yes.

6 Q Can you explain for us, just big picture, what it is that
7 you review?

8 A Yeah. So the platform I typically look at on a daily
9 basis the Decision Center. It's kind of like a one stop
10 shopping for all of our key performance measures. And it's
11 same -- you know, we use the same platform District Manager as
12 well. So it's easy for me to be able to speak the same
13 language.

14 Q And did you say performance measures or metrics?

15 A Oh, KPIs (ph). Like our performance.

16 Q Okay.

17 A Yeah.

18 HEARING OFFICER POWELL: Could you just --

19 MS. MARKEY: And what is --

20 HEARING OFFICER POWELL: I'm sorry. Could you just
21 explain for the reader of the record what specifically those
22 are, just so we know what you're talking?

23 THE WITNESS: There's so many. But if I could headline
24 it, it would be like revenue on a daily basis, on a weekly
25 basis, any trends around our customer experience our out the

1 window times, things of that nature. Our labor performance.
2 So it's really -- it's a platform where I can access any of the
3 data points that are used as leading indicators to help
4 understand where to go or what coaching conversations to have
5 for follow up.

6 HEARING OFFICER POWELL: When you say -- I'm sorry, but
7 when you say labor performance, could you explain --

8 THE WITNESS: Sure.

9 HEARING OFFICER POWELL: -- what that means?

10 THE WITNESS: Yeah. So we could -- I could see how many
11 hours a store or a district -- I usually look at the districts.
12 A district used for the week. If they earned those hours in
13 the previous week. And I could see three weeks out, right,
14 with scheduling. So I could see in that third week, our
15 rescheduling to the planned and/or forecasted, same difference,
16 hours, to ensure that we're being fiscally responsible with our
17 spend.

18 HEARING OFFICER POWELL: Okay. Thank you.

19 CONTINUED DIRECT EXAMINATION

20 BY MS. MARKEY:

21 Q Are you also about to explain with the customer experience
22 and out the window times, what that means?

23 A Sure. So we have a survey, right, that goes right to our
24 customers. We're able to really see if they felt they were
25 connected with. If their Barista got to know them.

1 They also have an opportunity in that survey to give us
2 feedback on how their beverage tasted, how their food tasted,
3 how fast they thought their service was, if our partners went
4 above and beyond with them. So I'm able to see that broken
5 down per district. So for example in district 761 in Scott, I
6 could see, you know, if on -- as a total team, you know, are we
7 connecting in a meaningful way with our customers? Do they
8 feel that we're trying to get to know them? Do they feel that
9 we're fast enough? That's the customer experience standpoint.

10 From an our the window standpoint, we measure in our
11 drive-thru locations the amount of time that a customer waits
12 at the window for their product. So I could see the amount of
13 seconds per Scott's or any one of my DMs' district, right, is
14 performing with all their drive-thrus, and how fast or slow
15 that time is at the window.

16 Q Great. I am going to share my screen and bring up exhibit
17 Starbucks Hopewell Employer 18. Jen, are you able to see
18 what's been marked as Starbucks Hopewell Employer 18?

19 A I can.

20 Q And can you tell us what this is?

21 A So this is a -- looks like a -- it's a snapshot, right,
22 from Decision Center. And this would show it's broken down by
23 district. So those numbers on the left hand side are all my
24 nine districts. And it would show how they're performing for
25 sales versus last year, versus our operating plan. Or that's

1 our dollars that we're expected, right, to deliver on a weekly
2 basis. And then also the sales in total, that the districts
3 met.

4 And now on the other side, the C-O-S-D is measuring the
5 amount of customer occasions per day. And it's also broken
6 down, as you can see, by district.

7 (Employer's E-18 identified)

8 Q Is this how you normally look at the comparison by
9 district? Is this what you see, when you open it up?

10 A It's exactly what I see, yes.

11 Q And why do you look at this comparisons by district?

12 A That's really the only way I can be able to follow up with
13 a conversation with a District Manager, on how their stores are
14 performing. So for example if I see, you know, a store that
15 really had heightened sales, let's go, you know, glass half
16 full, right? So have like a great amount sales, I could lead
17 in and say hey, you know, what happened last week? You know,
18 what -- why did your, you know, portfolio, your district, you
19 know, explode with sales?

20 So -- and I have to be able to ask questions, to be able
21 to be curious and learn more about some of our customer trends
22 and our sales trends for that particular district that the
23 District Manager would be closest too. I wouldn't know what
24 happens store by store.

25 Q And do you know what information is covered by the black

1 boxes here?

2 A Yes. It's the amount of -- the first one is sales
3 revenue, right? And the second one is our customer occasions.

4 Q And you say that you follow up with the DMs -- you
5 organize this by DMs so you can follow up with the DMs -- I'm
6 sorry. You organize it by districts so you can follow up with
7 the DMs. What kind of follow up do you do with the DMs? Could
8 you describe that for us?

9 A Yeah. So you know, for example right, if I saw a district
10 that was well off the rest of the area, right, or well off even
11 the district that would be next to them in customer occasions
12 for the entire, you know, week, I'd be able to ask, you know,
13 questions hey, you know, what happened? Did we have an
14 unexpected closure I wasn't aware of? Did -- you know, was
15 there a road closed that I wasn't aware of. You know, is there
16 anything that might have happened there that would explain the
17 difference in their district's performance versus the other
18 districts nearby?

19 A What do you expect if anything the DMs to do with that
20 information?

21 A Well, I would expect them to be aware, and be able to
22 communicate with me, or go follow up if they're not sure, and
23 do a deep dive into the specific stores in their district, to
24 come back and be able to answer the question for me.

25 Q And after they answer the question for you, or hopefully

1 answer the question for you, is there anything that you expect
2 next?

3 A Yeah. I mean I guess it depends on what they find out.
4 If it's a one time occurrence, like a road closure like I
5 mentioned.

6 But say we had a store that they were like yeah, you know
7 what? We had to close the store over the weekend, because we
8 couldn't staff it, because we had isolations. Well, then the
9 dialogue would into okay, well what if that happens next
10 weekend? What could we do proactively to put plans in place?

11 Talk to our partners in the store. Who on weekends had
12 availability and you know, want to go to surrounding stores to
13 get their hours? So if they're able to do that, maybe
14 proactively, we can have some of these conversations so we can
15 make partners whole and get them all of their hours, even if we
16 have to unexpectedly modify hours for a day.

17 Q And when District Managers go back -- and I know that's
18 kind of hard with the general example there, but in the
19 situation you talk about where say there was a COVID isolation
20 and there was staffing shortage (sic), is that kind of an issue
21 specific to one store, or how would you expect a District
22 Manager to address that?

23 A Yeah. So like I mentioned earlier, it's -- the first, you
24 know, line of defense there, right, would be talking with our
25 partners from that store that were not sick or not isolating,

1 to be able to go to other stores. And to be able to support
2 them getting their hours.

3 Now, if we could still operate in that store that was --
4 that we were potentially having to close, then it would be the
5 opposite, right? Then I would expect the District Manager to
6 go the surrounding stores, and be able to see who could go to
7 that store and cover a shift. So maybe we could even keep it
8 open, and not have to close it?

9 MS. MARKEY: We'd like to move for the admission Starbucks
10 Hopewell Employer 18.

11 HEARING OFFICER POWELL: Mr. Gaudioso?

12 MR. GAUDIOSO: Yeah. I'm going to object as to relevance.
13 And in fact I'm going to object as to the relevance of all of
14 the testimony with regard to this specific exhibit. Petitioner
15 has petitioned for the single store in district 761. If you
16 the Board determine that a single store unit is not
17 appropriate, then you're going to determine that all of the
18 stores within district 761 is the appropriate unit.

19 How a comparison of sales among all of the districts in
20 area 81 has any relevance to any of the issues with regard to
21 the issue -- the sole issue of what is the -- or what is an
22 appropriate unit for bargaining purposes is completely beyond
23 me. And all this does is muddies up unnecessarily the record.
24 So I object to this and to all of the testimony that was
25 adduced relating to this particular exhibit.

1 HEARING OFFICER POWELL: All right. Ms. Markey?

2 MS. MARKEY: If the only basis for the objection is
3 relevance, which is what I understand, I think that at the very
4 best goes to the weight. We clearly had a significant amount
5 of testimony from Ms. Pivarnik that explained not just what she
6 goes in and compares by district, but what she then does with
7 that information in communicating with her District Managers.
8 And what she expects her District Managers and in facts they
9 have done in the examples of COVID isolation. I could ask a
10 couple more questions, as that relates specifically to district
11 761. I think that's already understood, based on her testimony
12 to date. Happy to do that. But I think at best Mr. Gaudio's
13 objection goes to the weight of this evidence, not to its
14 relevance or admissibility.

15 HEARING OFFICER POWELL: All right. Why don't you go
16 ahead and ask those follow up questions? All right. Just to
17 give -- make sure that there's a complete record or on this
18 evidence.

19 BY MS. MARKEY:

20 Q Ms. Pivarnik, have you ever spoken with Scott, the
21 District Manager currently for district 761, about this
22 comparison by district and the information that you shared with
23 us, that you would relay to a District Manager, if there was an
24 issue with any of these numbers?

25 A Sure.

1 Q Can you think of an example of when you've done so?

2 A So all the reporting is broken down like this, right, that
3 I see on this page. So it could be a sales question. Could
4 also be -- I could think actually yesterday we -- I was taking
5 a look at Decision Center, this -- the same platform, and
6 seeing you know, how many hours Scott's district earned last
7 week for labor, and how much they were forecasted for. So then
8 I was able to ask Scott, as they seem to be over forecasting
9 quite a bit compared to the other districts. So I asked him to
10 take a look at that, and to better understand why they were
11 scheduled over forecast, and be able to come back to me with
12 some specific, you know, reasons why, based on his connections
13 with Store Managers. Does that --

14 Q And when --

15 A -- answer your question? Yeah.

16 Q It does. I'll ask a couple follow ups, just to make sure
17 everyone is on the same page with regard to the terminology.
18 When you say that you were looking at the hourly forecast or
19 what was predicted there, what is the hourly forecast?

20 A Oh, I'm sorry. It's the number of hours that are planned,
21 that Starbucks has, right, based on our labor team, that should
22 be used and scheduled the following week, that third week out.

23 Q And when you say that that number was over for Mister --
24 for district 761, that number was higher than forecasted? Is
25 that accurate?

1 A That's correct.

2 Q And with regard to this document again, this shows all of
3 the districts in your area. And that includes district 761
4 which includes the Hopewell store, is that correct?

5 A Correct.

6 HEARING OFFICER POWELL: All right.

7 MS. MARKEY: Mr. Powell, do you have any questions?

8 HEARING OFFICER POWELL: All right. Mr. Gaudioso?

9 MR. GAUDIOSO: Yeah. I don't think that helped a little
10 bit.

11 HEARING OFFICER POWELL: All right. Well, all right. I'm
12 going to overrule the objection and let -- I believe that what
13 the point of this is that it's to show that when what she does
14 and what happens with 761, as a result of this comparison with
15 the other groups, that I think what they're trying to say is
16 when she looks at this information and it goes to 761 in
17 particular, that questions may arise which cause her to ask
18 761's District Manager what's going on. And that the, as a
19 whole, 761 has to respond or do something in response to this
20 comparison.

21 So I believe that's what was -- that was the purpose of
22 this, and I'm going to let it in on that purpose. Ms. Markey
23 is correct, the reader of the record can give it its proper
24 weight. All right. You may continue, Ms. Markey. Ms. Markey?

25 (Employer's E-18 received in evidence)

1 MS. MARKEY: Yes. I'm sorry. I was making --

2 HEARING OFFICER POWELL: Oh, oh.

3 MS. MARKEY: -- sure that I stopped sharing my screen.

4 HEARING OFFICER POWELL: Oh, okay.

5 MS. MARKEY: I didn't freeze.

6 HEARING OFFICER POWELL: Okay.

7 BY MS. MARKEY:

8 Q How often do you look at Decision Center, with regard to
9 your districts in your area?

10 A I would say three to five times a week.

11 Q And how often are you having conversations with your
12 District Manager based upon what you review about the districts
13 in Decision Center?

14 A A weekly basis I would say.

15 Q And does that include speaking with Scott, the District
16 Manager for 761?

17 A Correct.

18 MS. MARKEY: I am close to done. If we could go off the
19 record, I have a question about the one last exhibit, that I'm
20 not sure that I can share the screen with the entirety of the
21 group? So if we could go off the record, Mr. Powell, with just
22 you, myself and Mr. Gaudioso?

23 HEARING OFFICER POWELL: Sure. Off the record.

24 COURT REPORTER: We're off the record.

25 (Whereupon, a brief recess was taken)

1 COURT REPORTER: We're on the record.

2 HEARING OFFICER POWELL: All right. Ms. Markey, go ahead.

3 MS. MARKEY: Thank you.

4 BY MS. MARKEY:

5 Q Jen, I'm going to share my screen to show you what's been
6 marked as Starbucks Hopewell Employer exhibit 19.

7 A Okay.

8 Q Give me just a second to pull that up. All right. Jen,
9 are you seeing a document that is title SM Pacesetter Report?

10 A Yes.

11 Q And it looks like this document has some redactions on it.
12 Is it accurate to -- if I tell you that we have redacted the
13 information -- or the only information we've redacted is the
14 numbers or information contained under the green column
15 headers? And I'll show you the first and second page of the
16 document. Looking at this document -- and I'll go back to the
17 first page and go to the second page again. Is it accurate
18 that the only thing redacted is the information contained in
19 the green column headers, beginning with store, and going
20 through to food, U-P-H growth?

21 A Yes. The numbers aren't there. Yep.

22 Q And the second page same question, is there any other
23 information that you see missing from this type of document, or
24 from this document, other than what's redacted in black, which
25 is the numbers contained in each of these headings?

1 A That's correct.

2 Q Okay. What is this document?

3 A So this is what we call the SM Pacesetter Report. You can
4 see that on top. What is it in a nutshell, it breaks down all
5 the stores in the district. So that's what you can see on the
6 left hand side there; the numbers of the stores and the names
7 of the stores. This one is for district 761 in Scott's
8 district.

9 And then it will breakdown some of the performance
10 measures like the headers, right? Customer connections, store
11 operations, turnover, controllable contribution, revenue and so
12 on.

13 (Employer's E-19 identified)

14 Q And is this some -- do you access this report?

15 A typically I would access this report if I was going to be
16 visiting a particular store in the district, to be able to see
17 how it compares to the other stores in the district.

18 Q How often would you access this report?

19 A typically only when I'm going to be visiting that store.
20 So when I'm in stores with Scott.

21 Q Are you about to access this report on any other way?

22 A I could. I can access it whenever I want.

23 Q And do you look -- when you -- what do -- when you say
24 that you look at this report before visiting a store with
25 Scott, why do you look at this report in that occasion?

1 A Yeah. So typically we would see, you know, any macro
2 factors in the environment, or the geography, or the district.
3 You would see throughout all the stores. Anything store-
4 specific, so for example hourly turnover, it's going to break
5 it down. What is the 12 month rolling turnover per each store.
6 If that was higher in one particular store, and we were going
7 to visit that store, then I would -- you know, my intention
8 would be to get close to ask partners you know, how the store
9 environment is, how their training went, and be able to help
10 Scott, you know, really root cause analyze why some of those
11 numbers may be higher or different than the district.

12 Q Have you done that with Scott, as it relates to the
13 Hopewell store? Do you recall any occasion that you looked at
14 this report for the Hopewell store, before visiting it with
15 Scott?

16 A I'm trying to -- last time we were there wasn't exactly --
17 I don't remember if it's this report in general. I will tell
18 you that yes, in terms of looking at Decision Center, and
19 looking at those same metrics. But it might have been a
20 different page I was looking at. We see this information on
21 various pages in Decision Center.

22 I remember specifically looking at customer connection for
23 Hopewell, and seeing how I think they were in the 30's at the
24 time. And that again just feeding, you know hey, I might want
25 to check on customer experience when I'm there? So that's what

1 I can recall from last time I was visiting that store.

2 Q Have there been other occasions where you've talked to
3 Scott about the metrics contained in this report for other
4 stores within the district before visiting?

5 A Oh, yes.

6 Q And can you say how often on average you've had those
7 kinds of conversations with Scott, in preparation for a store
8 visit after reviewing this report?

9 A So it's monthly. And in -- right now, you know, in the
10 meeting planner actually for both of us that are going to be
11 visiting stores on particular day, this report is pulled by
12 coordinator and uploaded in the planner for both Scott and I,
13 to be able to be aligned and see it, before we walk into that
14 store.

15 Q And we talked about with regard to the last report, what
16 your expectations were with regard to your DM if any, as
17 related to the information you see in this report. Similarly,
18 do you have any expectations when you talk to your DMs, as to
19 what they're going to do --

20 MR. GAUDIOSO: I'm sorry, Nina. Can you make that store
21 separate questions, because I'm going to get confused if you're
22 --

23 MS. MARKEY: Sure.

24 MR. GAUDIOSO: It sounded like there was a two part
25 question there.

1 MS. MARKEY: It was. And I'm sorry. I was referencing --
2 I was trying to make it easier by referencing the last report
3 in question, but I'll just start from scratch.

4 You said that you look at this report with your DM, in
5 preparation for your store meetings. Do you have any
6 expectations as to what your DM will do, as a result of meeting
7 with you and reviewing this report?

8 A Yeah. So I would say that's two expectations, very
9 specific. One is that where they're choosing to take me on
10 our, you know, field day or store visit day should be
11 intentional, right? We should be going to a store for a
12 reason.

13 So they should be looking at this report, and other
14 reports as well, right, to be able to have an intention for the
15 store. Like I mentioned, whether it's high turnover or low
16 customer connection, or low food U-P-H, or whatever. There
17 should be an intentionality to the visit. So that should be
18 that planning purpose.

19 And then afterwards, if we were to go diagnose one of
20 those indicators, say turnover for example, maybe what would
21 come out would be like the conversation with Scott with I, you
22 know, has been in the past. Okay, when's the last time you had
23 a listening session in the store? Do you really know how the
24 hourly partners are feeling? When can you commit to doing that
25 by? So that's sort of how this would be book-ended. And that

1 conversation would happen with the District Manager or Scott in
2 this case.

3 Q It looks like there's 12 stores listed here in the left.
4 And I believe you testified earlier that there's 12 stores in
5 the district. Why is that? Or do you know why that is?

6 A I'm just trying to read them all through. So yes, yes, I
7 do know why that is. Because 1320 Route 206 isn't open yet.

8 Q Do you know when that's scheduled to open? If that's not
9 confidential. I don't want you to answer if that's
10 confidential. I'm sorry. I --

11 A I can give you a month. I think that's --

12 Q Okay.

13 A It's slated for March right now. That could -- that's a
14 moving target. Yeah.

15 MS. MARKEY: Okay. No further questions for this -- ah,
16 before that, we'd like to move for the admission of Employer
17 exhibit 19.

18 HEARING OFFICER POWELL: Mr. Gaudioso?

19 MR. GAUDIOSO: No objection.

20 HEARING OFFICER POWELL: All right. So received.

21 (Employer's E-19 received in evidence)

22 MS. MARKEY: No further --

23 HEARING OFFICER POWELL: All right.

24 MS. MARKEY: -- questions at this time for this witness.

25 HEARING OFFICER POWELL: Okay. Mr. Gaudioso?

1 MR. GAUDIOSO: Yes.

2 CROSS-EXAMINATION

3 BY MR. GAUDIOSO:

4 Q Good morning. It's Ms. Pivarnik?

5 A You got it.

6 Q Am I pronouncing that correctly? Good morning.

7 A Yes. Good morning.

8 Q Excuse me. My name is Dave Gaudioso and I'm counsel for
9 Workers United for this particular hearing. Want to follow up
10 on some questions -- I'm sorry, on some issues that you
11 discussed in your direct.

12 I don't know if you were present, when I was talking with
13 Mr. Thibedeau yesterday. I tend to not notice, when I start to
14 speak quickly. So if I'm talking too quickly, or you don't
15 understand my question, please ask me to slow down or to
16 rephrase a question. I'll be happy to do that.

17 A Thank you.

18 Q Sure. So the exhibit number 17 was a map. Do you recall
19 that? And I'm sorry, I'm not in my office because of technical
20 reasons, or else I'd be able to pull it, but as I recall --

21 A I remember.

22 Q -- that -- as I recall that map, I believe the
23 southernmost store is the Bordentown store, and the
24 northernmost store in district 761 is the Hillsborough store.
25 Is that the --

1 A That sounds correct, yes.

2 Q Okay. Do you happen to know by distance what that is in
3 miles? What the distance between Bordentown and Hillsborough
4 is?

5 A I don't know the miles. I could probably give an
6 approximate time frame.

7 Q I'm not going to ask you to --

8 A Yeah.

9 Q -- guess. If you don't know, you don't know. That's
10 fine. I mean we can always look it up on Google Maps or what
11 have you. Do you have any sense though what the mileage for
12 district 761 is? Like what the scope of the size of district
13 761 is by geography?

14 A So I guess I could answer that would be -- I'm assuming
15 it's about -- I think it's about a half hour max, to get to the
16 all the stores, right, if I'm a District Manager traveling
17 around. I don't know. I have not timed it. So I don't know
18 if that's --

19 Q Okay.

20 A -- exact. Yeah.

21 Q Okay, that's fine. Do you know how many times in 2022
22 that Mr. Thibedeau has been in the Hopewell store?

23 A I do not.

24 Q Do you know how many times in 2021?

25 A I do not.

1 Q And assumedly you don't know for 2020 either?

2 A I do not.

3 Q Okay. Now, I believe you testified that you visit the
4 stores in district 761 one time per month?

5 A That's an approximate, yeah.

6 Q Okay. Now, is that all the stores in district 761?

7 A No. So typically I would have a store day with each of my
8 nine DMs on average once a month, depending on what other
9 meetings or whatnot may be, maybe their vacations, but that's
10 an average. So during a store day, we may visit anywhere from
11 one to four stores, depending on the intention of the visit,
12 the length of the visit. Things of that nature.

13 Q Okay. So -- and I'm sorry, how many stores are in
14 district 761?

15 A Right now there's 12 stores with one, as I mentioned
16 earlier, going to open.

17 Q Okay. And how many stores do you have in area 81?

18 A Believe it's about 115 now. We just opened up a few. But
19 I think it's 115.

20 Q All right. So let's just concern ourselves for the moment
21 with district 761. So I'm clear, when you said visit stores
22 it's not that you're visiting every store. You're visiting a -
23 - you have a store day. That's the day to go out to some store
24 or another, is that correct?

25 A You got it. Yeah.

1 Q Okay, great. And you say you go there with
2 intentionality. You're going for a -- to a store for a reason,
3 right?

4 A (No audible answer)

5 Q Okay. So if there is not an issue in a particular store,
6 you may not visit that store from one month to the next, is
7 that accurate?

8 A So the District Manager would be responsible for choosing
9 what stores typically we're going to go to. Now, that could
10 be, like you said, an issue. But it could also be the fact
11 that I haven't been there in a while. And maybe, you know,
12 again just having some leadership presence, be able to connect
13 in with partners, checking the environment. Or it could be
14 even recognition-based.

15 Sometimes a District Manager or Scott has said this with
16 me as well, and say hey, I want to go to a store and I want to
17 recognize a leader, because they're doing really well. Either
18 a new Store Manager, or they opened a new store, or whatever
19 the reason is. So they would typically dictate, unless I saw
20 something or knew something that I wanted to do specifically,
21 on what stores we would be visiting.

22 Q Okay. Now I believe you also testified that you have
23 visited the Hopewell store two times. And to use the phrase
24 you used, two times in the past couple months.

25 A Correct.

1 Q Okay. When you say the past couple months, do you know if
2 that would be -- well, let me ask it this way. Have you
3 visited the store since January 11th of 2022?

4 A No.

5 Q Okay. So in the past couple months, that would be before
6 January 11th 2022?

7 A Correct.

8 Q Okay. Do you -- can you give an estimate of how many
9 times you visited the Hopewell store in calendar year 2021?

10 A I -- no. I know it was at least once. I remember one
11 time. I'm trying to think of like what month and year that
12 was, but it was after they had a renovation I remember, because
13 we were chatting about some of that. But no, with that many
14 stores, it's hard to keep track of. I'd have to go back to my
15 calendar.

16 Q Okay.

17 A Yeah.

18 Q But you would say at least one time?

19 A Again, with 115 stores, yes, I remember the one time that
20 they were closed.

21 Q Okay.

22 A I don't remember what month that was, but they had just
23 reopened.

24 Q That's fine.

25 A Yeah.

1 Q That's fine. Okay. Now, you spoke about the meetings
2 that you have with your District Managers. Do you ever have
3 meetings or do you have scheduled monthly meetings with your
4 Store Managers?

5 A No. The only scheduled meetings with Store Managers would
6 be those round tables I spoke about, which is not monthly,
7 right? Typically on average, with nine districts that's about
8 ever six months I try to have that group together. And then I
9 also have a quarterly, ever three months all Store Manager call
10 for about an hour, that they can come on, and I can -- you
11 know, state of the business. They could ask questions if they
12 have them. Those are the only scheduled ones that would be
13 just me and them without the DM.

14 Q Okay. Now when you say they can come on, are they
15 required to come on or it's optional for those --

16 A Oh, I --

17 Q -- quarterly --

18 A -- mean it's -- I mean it would be an expectation to be
19 there, if you know, you're engaged in the business, and you
20 want to learn about the area. And that would be paid time. So
21 yeah, I guess it would be an expectation for them to be on.

22 Q And so --

23 A I never follow up if someone isn't on --

24 Q Okay.

25 A -- with 115. Yeah.

1 Q Sure. No. I understand. All right. Now, you spoke
2 about your expectation of staffing a new store with at least
3 half experienced partners.

4 A Yes. That's ideal.

5 Q That would be idea (sic) from your perspective, correct?

6 A Correct.

7 Q Okay. But those experienced partners, they're voluntarily
8 going to that new store, correct?

9 A Yeah.

10 Q Okay. Now you used a term sometimes you're brought in the
11 loop regarding discipline of a partner. And when I say
12 partner, I'm going to just limit partner, unless I say
13 otherwise. Let's just limit partner to Baristas and Shift
14 Supervisors. All right?

15 A Yeah.

16 Q So can you estimate, let's just say in 2021 -- well, you
17 know, let's start 2022, from January 1 to now, how many times
18 you've been brought into the loop on a disciplinary matter in
19 district 761?

20 A That would just be the past month, right?

21 Q Month and --

22 A Maybe one? I can think of one of the top of my head.

23 Q Okay. Can you tell us about that?

24 A Sure. We had a -- it was a Shift Supervisor, and I had --
25 it was up in the store. We had a conversation. And that

1 turned into just learning more about that hourly partner. I
2 don't want to say their name in particular.

3 Q I don't care about the name. Just tell us --

4 A Yeah.

5 Q -- about the issue.

6 A So then it went into a conversation on some of the
7 performance issues that was happening with that partner as
8 well, and what the Store Manager and the DM were working
9 through, because it's a new Store Manager in that store. So
10 again, it gives me the opportunity to be curious, ask
11 questions. I think there was a documentation that was issued
12 to that partner recently as well. So that was an example of a
13 conversation about hourly -- oh, Shift Supervisor, sorry,
14 performance management conversation.

15 Q So were you involved because it was a new Store Manager?

16 A I was involved because the District Manager made me aware.

17 Q Okay. So how about in 2021? How many times would you say
18 you've been brought into the loop, regarding an hourly
19 disciplinary matter for a partner?

20 A I couldn't say off the top of my head.

21 Q Okay.

22 A I'm close to 3,000 partners in the area.

23 Q Completely understand. Do you have any recollection if
24 you've ever had to be involved in a disciplinary matter, with
25 regard to a partner specifically in the Hopewell store?

1 A In the Hopewell store? No. I can't remember one off the
2 top of my head.

3 Q Okay. Now, you also talked about sometimes talking with
4 partners if there's -- if you're noticing something regarding
5 connecting with customers. Do you recall that testimony?

6 A It sounds like me, yes.

7 Q Okay. So and how often would you say you go into a store
8 in district 761 to talk with partners regarding connecting with
9 customers?

10 MS. MARKEY: I'm just going to object to the question, to
11 the extent I think it mischaracterizes earlier testimony. I'll
12 let Jen answer.

13 HEARING OFFICER POWELL: All right. Objection is noted.
14 You may answer, Ms. Pivarnik.

15 THE WITNESS: Repeat the question, sorry.

16 MR. GAUDIOSO: Sure. How often have you been -- have you
17 gone to a store in district 761 to discuss with partners an
18 issue regarding connecting with customers?

19 THE WITNESS: So I would say probably almost every time
20 I'm together with Scott in stores, we're observing you know,
21 what interactions are, we're making suggestions. It probably
22 isn't me that's coaching a Shift Supervisor or Barista
23 directly. It would be the District Manager, right, that
24 conversation to then follow up.

25 If the manager was there, great. If the manager wasn't

1 there, then the District Manager or Scott, right, would be able
2 to go to the Shift Supervisor and make a suggestion. Like one
3 thing in particular I can think of in a store in district 761
4 was we weren't seeing really thank yous at the hand off, or
5 engaging with customers. So the recommendation in that store
6 in the moment was, you know, could we move the partner to the
7 outside of the hand off, to be able to be in a better spot and
8 able to hear my clearly and connect with customers. So that's
9 an example of that.

10 BY MR. GAUDIOSO:

11 Q Okay. Do you have any other examples?

12 A Of connecting with customers? Yeah. So I could recall
13 another instance where I think we were observing, and this was
14 a drive-thru. And we weren't observing the -- I don't know if
15 it was a Barista or a Shift Supervisor to my recollection at
16 the window and kind of closing the window, and not continuing
17 the conversation or connecting with customers. So again that
18 was a coaching moment to be able to you know, just redirect the
19 priority in that moment, you know, would be customer focus, and
20 engaging, and asking about their day.

21 Q Now, did you interact with the partner, or was that the
22 District Manager or the Store Manager that had the interaction
23 with the partner?

24 A In the first case, I think it was both of us having that
25 conversation. In the second case --

1 Q Both of us being? I'm sorry, both of us being?

2 A Oh, I'm sorry. Scott and I.

3 Q Okay.

4 A The second --

5 Q Was the Store Manager present at the time?

6 A The Store Manager was present at the time, but they were
7 not the partners at the hand off.

8 Q Okay.

9 A The second --

10 Q I'm sorry, go ahead.

11 A -- example was of a drive-thru. And if you know the
12 design of our stores at all, it gets a little cramped to go
13 behind the line. So I believe that was just Scott that went
14 behind the line in that moment. And the Store Manager was
15 there as well. And I think the Store Manager was with him, if
16 I remember correctly.

17 Q Okay. Now, I believe I saw your name in the chat
18 yesterday. You were present for I think some part of Scott's
19 something?

20 A Some of it, yeah.

21 Q Okay. Did you happen to be present, when I was asking him
22 questions?

23 A I was present for some of it. I'm not sure if I was on
24 the whole time.

25 Q Okay. All right. Let me ask you a few questions. Scott

1 provided some testimony regarding the authority of the Store
2 Managers to hire. Were you present for any of that
3 conversation?

4 A I remember that, yeah.

5 Q Okay. Was he incorrect in his testimony? I mean are
6 Store --

7 A I'm sorry.

8 Q -- Managers allowed -

9 A Could you be more specific?

10 Q -- to -- sure. Are Store Managers allowed to have the
11 authority to hire Baristas on the spot?

12 A So they are allowed to hire. We do background checks and
13 some processes --

14 Q Sure.

15 A -- that go along with that.

16 Q Okay. Specifically with regard to discipline, how often
17 would you say you've been involved in the discipline of a
18 Barista or a Shift Supervisor in district 761 in the past year?

19 A Can you define involved?

20 Q Well, that you either recommended what the level of
21 discipline would be or imposed the level of discipline?

22 A I haven't delivered any discipline, if that's what you
23 mean, to a Shift Supervisor or Barista. In terms of consulting
24 on what level, I mean I can think of one example. But it's
25 typically going to be the District Manager consulting with the

1 Store Manager for hourly partners' discipline.

2 Q If the Store Manager goes to the District Manager,
3 correct, and asks a question?

4 A Yes. And it would be an expectation that they should be
5 escalating, if they're not sure what to do with a partner.

6 Q If they're not sure what to do?

7 A Correct.

8 Q In the ordinary course of things, if they know what to do
9 they don't have to contact the District Manager, right?

10 A If it's something that the District Manager should be
11 aware of, then I would expect them to contact them. Whether
12 they knew what to do, but they should be informing them, or
13 they're not sure what to do and they should be asking what to
14 do.

15 Q Well, when you say inform them, that's after the fact,
16 right? That's after the discipline has been imposed.

17 A Not necessarily. I could go to -- I could say -- I could
18 go to, you know, my leader and say hey, I'm thinking of issuing
19 this disciplinary action to this District Manager. I'm still
20 informing them and without asking, but it happens prior to
21 issuing that corrective action.

22 Q Do you have any --

23 HEARING OFFICER POWELL: Okay. I'm a little confused by
24 that, because it seems to me if you're saying that you think
25 you're going to issue this discipline, then you haven't made

1 that determination yet. It's almost as if you were asking the
2 person above you.

3 THE WITNESS: No, I --

4 HEARING OFFICER POWELL: Maybe you want to rephrase how
5 you --

6 THE WITNESS: Sure.

7 HEARING OFFICER POWELL: -- answered that?

8 THE WITNESS: Yeah. So I guess my point is, is that when
9 I say inform, I don't mean after the fact. I mean it could be
10 informing that this is what occurred. This is the level of
11 discipline that is recommended. And I want that person to be
12 aware that I'm going to be issuing it.

13 That's -- I don't consider that asking, but I'm also
14 consider that happening, prior to issuing the discipline. That
15 was the example, when it's -- I don't think it's always the
16 same in every scenario.

17 MR. GAUDIOSO: Okay. All right. You don't personally
18 train Baristas or Shift Supervisors in district 761, right?

19 THE WITNESS: I do not.

20 BY MR. GAUDIOSO:

21 Q Okay. How often are you involved in the promotion of a
22 Barista to a Shift Supervisor in district 761?

23 A I am not.

24 Q How often are you involved in permanent transfers between
25 stores in within district 761?

1 A I am not.

2 Q How often do you get involved in individual store
3 scheduling matters, for stores within district 761?

4 A On a weekly basis, I take a look at the district's labor
5 analysis. What I talked about earlier, right? About the
6 forecasted hours and the earned hours. And so obviously on a
7 weekly basis, there's email communication, if not verbal
8 communication, on you know, what stores may be not meeting
9 expectations in that place. I don't know if that answers your
10 question.

11 Q No, not really. So I'm thinking about the schedule that
12 gets posted on the refrigerator or in the back.

13 A Yeah.

14 Q Okay. So --

15 A Oh, I don't make the schedules. No.

16 Q Okay. Thank you. Do you ever get consulted about
17 approving time off?

18 A For hourly partners? No.

19 Q How often have you sat in on a hourly partner's evaluation
20 in district 761?

21 MS. MARKEY: Object for lack of foundation. I don't think
22 we've had any testimony about that, and testimony to the
23 contrary in fact.

24 HEARING OFFICER POWELL: Yeah. I think --

25 MR. GAUDIOSO: Well, she can say whether she has or not.

1 HEARING OFFICER POWELL: Yeah. She --

2 MS. MARKEY: But --

3 HEARING OFFICER POWELL: Rephrase your question though,
4 Mr. Gaudioso.

5 MR. GAUDIOSO: Have you participated in any evaluations of
6 hourly partners in district 761?

7 MS. MARKEY: Again, I'm going to object to the lack of
8 foundation. There's been no testimony that there are
9 evaluations of hourly partners in the district.

10 MR. GAUDIOSO: Sure there is. I'm sorry. Mr. Thibedeau
11 testified that they're usually done twice a year yesterday.

12 HEARING OFFICER POWELL: Yeah. But I think she's talking
13 about objection to Ms. Pivarnik. So --

14 MS. MARKEY: And to --

15 MR. GAUDIOSO: All right.

16 MS. MARKEY: -- the use of the term evaluations.

17 MR. GAUDIOSO: Okay --

18 MS. MARKEY: Again, if you want to --

19 MR. GAUDIOSO: Sure. Okay.

20 HEARING OFFICER POWELL: You can ask you question. I just
21 think you need to --

22 MR. GAUDIOSO: Sure. No, okay.

23 HEARING OFFICER POWELL: -- ask her if she knows.

24 MR. GAUDIOSO: No, that's fine. Ms. Pivarnik, are your
25 hourly partners evaluated on a twice a year schedule?

1 THE WITNESS: So I believe what Scott mentioned yesterday,
2 which I can attest to, is that we have performance and
3 development conversations with our hourly partners twice a
4 year.

5 CONTINUED CROSS-EXAMINATION

6 BY MR. GAUDIOSO:

7 Q Okay. Are you involved in those?

8 A I do not sit on those.

9 Q If two hourly employees in district -- in store in
10 district 761 have a dispute or an issue between themselves, how
11 often do you get involved in resolving that dispute?

12 A That would depend if it was something that was just
13 deescalated at the moment, typically I wouldn't get involved.
14 If it was something where a partner maybe created a scene, or
15 there was an alteration of some sort, there would be an
16 incident report that they should be filing. I get a copy of
17 all of those immediately in my inbox. So I would be aware, and
18 be able to ask how are our partners? How are they doing after
19 that alteration or that argument? So that would depend.

20 Q So you're informed after presumably some action is taken
21 either by the Store Manager or the District Manager?

22 A That's correct.

23 Q But you're not doing the resolution at that point?

24 A I'm not there when it happens, no.

25 MR. GAUDIOSO: Okay. All right. Thank you, Ms. Pivarnik.

1 I think that's all I have, subject to any recross.

2 HEARING OFFICER POWELL: All right. I just have a couple
3 questions, Ms. Pivarnik. Can you just tell me how are -- in
4 district 761, the stores, how are they supplied?

5 THE WITNESS: For inventory?

6 HEARING OFFICER POWELL: Yes. How -- like if Hopewell
7 needs some stuff, what's the process for Hopewell saying we
8 need more java roast or whatever? Could you tell me about that
9 process?

10 THE WITNESS: Sure. Yeah, yeah. So they get a daily
11 order. A fresh delivery, which would include their food order,
12 right? We get replenishment or a fresh market. They also have
13 a weekly. And Hopewell, I believe has this twice, a roasting
14 plan order, to get like the whole bean coffee, some of the
15 single serve, you know, paper products, things like that.

16 HEARING OFFICER POWELL: All right. Is that -- I mean
17 does this -- who places that order. Is that something that
18 automatically comes out from the -- from corporate, or from the
19 district, or from the store?

20 THE WITNESS: Yeah. It's both. We do have an automated
21 ordering system we actually just launched for some of that
22 daily product which I just mentioned. For the roasting plan
23 order, we would still -- we would have typically it's the Store
24 Manager or a Shift Supervisor that would do that order, based
25 on my experience.

1 HEARING OFFICER POWELL: Okay. Are -- do you know -- not
2 -- between the stores and the district, is there -- like does
3 Hopewell say to I forgot one of the other stores, but do they
4 say like hey, look, we're out of like --

5 THE WITNESS: Every single day. And I will tell you, in
6 the past two years -- and I know -- I think we all know what's
7 been going on with inventory, and procurement, and everything
8 else, it is on a regular basis. Where actually in district
9 761, and we do this is other districts too, but they have a
10 store in Robbinsville that has a big basement. I think Scott
11 actually mentioned it yesterday, with some of the training they
12 can do there. There's a conference room in that basement as
13 well.

14 So if we have a store that has a lot more storage,
15 sometimes that store I know I has in fact -- well, additional
16 order. I'm sorry, I guess they're buying it, but not with
17 their money. Order additional product to store there, so that
18 if a store -- neighboring store like Hopewell, or Mercer Mall
19 or Princeton needs something, and they don't have the luxury of
20 a big back of house or a basement, they can you know, transfer
21 or borrow, quote/unquote, the product from that store. So that
22 happens, you know, on a regular basis throughout stores.

23 And it's my expectation of the DM in that standpoint to
24 stock balance. So if have one store with, you know, gallons of
25 pumpkin spice sauce and one store with none, the expectation or

1 my expectation would be the DM would be aware of that and be
2 able to transfer product to stock balance across the portfolio.
3 So a customer doesn't go to one store, and not be able to get
4 pumpkin spice latte, and they go to the next store right next
5 door, and they can, right? That's not a great customer
6 experience.

7 HEARING OFFICER POWELL: Okay. All right. All right.
8 That's what I wanted. Oh, you talked before about like, you
9 know, you have this group chat, I think with the Store Managers
10 that's once a month is it? Or monthly, I think?

11 THE WITNESS: Oh, I'm sorry. Are you -- I have an all
12 Store Manager call.

13 HEARING OFFICER POWELL: Yes.

14 THE WITNESS: The chat slash call. That's actually
15 quarterly. I do that --

16 HEARING OFFICER POWELL: Okay.

17 THE WITNESS: -- four times a year with the whole
18 population of Store Managers in the area.

19 HEARING OFFICER POWELL: All right. Is there such a thing
20 for the partners as well? I mean is there --

21 THE WITNESS: So that's a great question. Right now,
22 starting actually this month in February, I started putting a
23 monthly flier out there to all the stores, to invite hourly
24 store -- hourly partners as well as Store Managers, to be able
25 to come on for that type of chat. But prior to this February,

1 I have not done that in the past. But knowing that I think
2 could be great to have that similar type of forum for our
3 hourly partners as well.

4 HEARING OFFICER POWELL: Okay. Oh, and this is just a
5 point of clarification. You said before when Mr. Gaudioso
6 asked you that the stores were about a half -- you mean they
7 were about a half hour from each other, right? Not that the --

8 THE WITNESS: Yeah.

9 HEARING OFFICER POWELL: Or not -- okay.

10 THE WITNESS: Yeah.

11 HEARING OFFICER POWELL: All right. I just wanted that to
12 be -- to clarify for the reader of the record. All right.
13 Okay. All right. I have nothing further. Ms. Markey?

14 MS. MARKEY: Just a few.

15 REDIRECT EXAMINATION

16 BY MS. MARKEY:

17 Q You had some questions on cross-examination regarding your
18 involvement with discipline, and Store Managers' expectations
19 or authority with discipline. Are Store Managers expected to
20 go to District Managers with regard to issuing written warnings
21 before they issue them?

22 A I mean I think it would be the best way to go, right? So
23 it's not a surprise, if we have someone that's being
24 documented, especially if they're a Shift Supervisor or, you
25 know, a future leader for us.

1 Q Do you have any understanding as when a Store Manager does
2 go to the DM regarding a discipline why they're doing so?

3 A I think it's two-fold. Like I said earlier, one it could
4 be that they're not sure. Maybe they've done their virtual
5 coach? I know that was bought up yesterday. That's a tool we
6 have for Store Managers. But maybe it wasn't clear, or that
7 example wasn't in the virtual coach? And then they need to go
8 to the DM to be able to ask what to do.

9 Or, like I said, it could be just I'm going to do this.
10 Like this is my recommendation. This is what I feel is right.
11 This is why. And it's informing the DM. I don't know if
12 that's always consistent. I do think anything above, you know,
13 a documented coaching or a verbal, the DM should absolutely be
14 aware.

15 Q And has it been your experience with the DMs in your area,
16 that when the Store Managers are talking to them about the
17 discipline, that they're doing it for one of those two reasons?
18 One, they're trying to figure out what level of discipline or
19 what to do. And two, or informing and making sure that they
20 know.

21 A Yes.

22 Q And it's been -- my question was a little bit long there.
23 So has it been your experience in your area, that it's been
24 both of those reasons?

25 A Yeah. Yes, absolutely.

1 Q Are Store Managers expected to go to District Managers
2 before terminating an employee?

3 A Yes.

4 Q Are Store Managers able to just terminate an employee on
5 their own?

6 A No.

7 Q Are you aware of whether or not DMs are involved in your
8 area with hiring of Shift Supervisors?

9 A They can be. The Store Manager would be the one
10 responsible for going on to Telayo (ph), which is our
11 recruiting system. Being able to, you know, interview Shift
12 Supervisors. But obviously if they don't have that pool, and
13 they don't have somebody internally, you know, to promote or in
14 the district, then the District Manager has access to the whole
15 district Telayo, and they can actually push people out from the
16 pool into their pool from other stores, and just help that
17 Store Manager be able to find external Shift Supervisors to
18 interview and to potentially hire.

19 Q Do your District Managers in your area do that?

20 A They should be, yes. Absolutely.

21 Q You received some questions on cross-examination about the
22 schedules. And you stated that you don't actually put the
23 schedules together and post them, correct?

24 A Correct.

25 Q And you had some questions -- in response to some of the

1 questions about scheduling, you mentioned the district labor
2 analysis. Is that district labor analysis that you look at, do
3 you discuss that with the DM?

4 A So the system I have in place is that the report comes out
5 Tuesdays. The District Managers have about 24 hours to be able
6 to review where they were the previous week, the came in to
7 earned, where their plan for the next two weeks. And they send
8 me a recap, which then I read through and I answer, either via
9 phone call or via responding to the email. And understanding,
10 you know, why the hours are being -- were used and/or are
11 planned to be used with the schedule.

12 Q Do you expect, depending on your feedback on that recap
13 from the District Manager as to the labor report for their
14 stores, do you give any follow up instructions to the DM, with
15 regard to staffing in that store?

16 A Yes.

17 Q Do you have any expectation as to whether the DM then
18 follows up with those specific stores, about staffing in
19 accordance with or as a result of the review of the labor
20 analysis?

21 A Yes. I can give an example. So if we have a store comes
22 in negative, right, to their earned, that means that the had a
23 lot more customers, a lot more business than it was than we had
24 partners that were working on those shifts. That's not a good
25 partner experience. It's not a good customer experience.

1 So the question would be, you know, how -- you know, why
2 were we so negative? Maybe it was call-outs, or isolations, or
3 something of that nature that's short term and going to be
4 better for the following week? Or it could be we're just short
5 staffed.

6 So then my question would be okay, so what is your plan?
7 Are we going to modify hours? Like how are we going to take
8 care of our partners, if we don't have enough to work the
9 floor, to be able to meet business demand? That's an example
10 of some of those after actions that might come from that
11 analysis.

12 Q And when you say after actions that come from those --
13 that analysis and that conversation, is that the conversation
14 you have with the DM?

15 A DM. Yes.

16 Q And what do you expect the DM in that situation that you
17 just described to do with that information, with regard to the
18 staffing?

19 A Take actions to ensure that we have the proper staffing
20 for a good partner experience.

21 HEARING OFFICER POWELL: I'm sorry.

22 MS. MARKEY: And is --

23 HEARING OFFICER POWELL: I'm sorry, Ms. Markey, but how
24 often did you say that happens?

25 THE WITNESS: Oh, every week. That's the cadence. The

1 report comes out Tuesday. The recap is given to me by 5:00
2 o'clock on Wednesday. And then I take the time to read through
3 those recaps from my DMs and be able to ask additional
4 questions, or you know, just validate that I understand, you
5 know, what was submitted and we move forward.

6 HEARING OFFICER POWELL: Okay. I'm sorry, Ms. Markey.

7 BY MS. MARKEY:

8 Q And to the extent that you then expect a DM to take that
9 information that you've discussed with them, and take it to the
10 Store Manager, do you have any understanding as to whether
11 that's ultimately expressed in the schedule that results or the
12 next schedule that results?

13 A Yes. Because I can see how the numbers may change. We
14 also do try not to disrupt if possible those schedules that are
15 currently posted. Sometimes we have to obviously. But the
16 expectation would be that the following schedule that is
17 written, we may need to increase or decrease the amount of
18 hours on that schedule. Because either we're not earning them
19 or we're earning a lot more, and we need to schedule more
20 hours.

21 Q And the person that's ultimately making the schedule would
22 be aware of that?

23 A The Store Manager. Yeah, they'd have to be. They're
24 making the schedule. Yeah.

25 Q You testified on cross-examination about incident reports

1 and the fact that those all come to your attention. And by its
2 nature, an incident report also include what happened, to the
3 extent that there was any resolution?

4 A So the incident report will share with me what occurred.
5 So that could be a conflict with two partners. It could be a
6 conflict with with a partner and a customer. It could be
7 anything. Any disruption I would say in a store. It could be,
8 you know, misuse of a bathroom, or whatever that may be. That
9 would be sent to me, via it being submitted into the digital
10 incident report form. So it could be a Shift Supervisor or a
11 Store Manager filling that out.

12 It will -- it's based on their notes, what I get. So
13 sometimes, you know, I can see resolution in there. Sometimes
14 I have to ask for it, and say hey, I saw that we had, I don't
15 know, a partner and a customer yell in a store. Is our partner
16 okay? What happened? You know, any follow up.

17 So that's the types of things. I don't always get that in
18 the email. It depends on -- I just get the verbiage that was
19 filled out.

20 Q Do you -- are you ever involved in any follow up to that
21 incident report once you receive it?

22 A Yes.

23 Q Can you give me an example?

24 A Yeah. I mean I would say that that would be one that has
25 occurred more recently I think, where we had a -- you know, if

1 a partner ever is in -- this is yelling, right? Whether a
2 customer to a partner or a partner to a customer.
3 Understanding, you know, what happened there. Who owned that.
4 Is it a customer that we might need to --

5 MR. GAUDIOSO: I'm sorry, Ms. Pivarnik. I thought you
6 were giving a specific example. Now it sounds like you're
7 giving a generalization. Are you talking about a specific
8 example?

9 THE WITNESS: This occurs. Oh, yeah, this is specific
10 example.

11 MR. GAUDIOSO: No, but I know --

12 HEARING OFFICER POWELL: This has occurred?

13 THE WITNESS: This has occurred. Sorry, this has
14 occurred. This example has occurred, where we've had a partner
15 and a customer.

16 Maybe there was a yelling or a situation. And then the
17 after action is that that's the question, right? So what did
18 the partner say and do? What did the customer do?

19 We have processes in place, where if a customer is not,
20 you know, acting or behaving in the space that's intended to be
21 acted to, we can go and put in a restriction. A partner that
22 maybe yelled back or you know, didn't act appropriately in that
23 scenario, there may be corrective action or disciplinary action
24 to be complete. So that happens all the time.

25 BY MS. MARKEY:

1 Q And when that happens, are you involved with regard to
2 whatever follow up is taken with the customer and/or partner?

3 A It depends I guess how much it escalates. I can think of
4 specific scenarios where I've met with customers, where we've
5 had an escalated manner to recover service to apologize.
6 Typically the District Manager would be the one to follow up
7 though.

8 Q And when the District Manager is the one who follow ups,
9 are you involved at all with the nature of that follow up, or
10 do you have any conversations regarding that follow up before
11 it happens?

12 A It's up to the District Manager's discretion I think, if
13 they need some more guidance before going into that
14 conversation. So I would say that varies.

15 Q You mentioned on cross-examination you referenced the DM's
16 portfolio. And I think you used that term on the direct, and
17 I'm not sure that I defined it. What do you mean by portfolio?

18 A The district.

19 MS. MARKEY: No further questions, unless there's more
20 cross-examination.

21 HEARING OFFICER POWELL: Well, yeah. I just want to
22 follow up. To your last question, you said it meant the
23 district? The portfolio meant the district?

24 THE WITNESS: I believe I referred to, I don't know if it
25 was Scott or a District Manager's group of stores as a

1 portfolio. It is the district. The same. That's what I
2 meant; same thing.

3 HEARING OFFICER POWELL: Oh, okay.

4 THE WITNESS: Yeah.

5 HEARING OFFICER POWELL: All right. Okay. All right. I
6 see. Okay. Mr. Gaudio, do you have anything further?

7 MR. GAUDIOSO: No, I don't think so.

8 HEARING OFFICER POWELL: Okay. All right. I don't think
9 I have anything either. Thank you, Ms. Pivarnik. You may step
10 down. All right. Off the record.

11 (Recessed at 12:20 p.m.)
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A F T E R N O O N S E S S I O N

(Time Noted: 1:34 p.m.)

COURT REPORTER: We're on the record.

HEARING OFFICER POWELL: Okay. Ms. Markey?

MS. MARKEY: No further witnesses at this time for the Employer.

HEARING OFFICER POWELL: Okay. All right. So you -- you're resting your case?

MS. MARKEY: Yes.

HEARING OFFICER POWELL: All right. Mr. Gaudioso, on behalf of the Petitioner?

MR. GAUDIOSO: Yes.

HEARING OFFICER POWELL: Do you wish to call a witness?

MR. GAUDIOSO: Yes, I do. Sara, can you --

HEARING OFFICER POWELL: All right. Off the record for a second.

COURT REPORTER: We're off the record.

(Whereupon, a brief recess was taken)

HEARING OFFICER POWELL: Back on the record.

COURT REPORTER: We're on the record.

1 HEARING OFFICER POWELL: All right. Mr. Gaudioso, you may
2 call --

3 MR. GAUDIOSO: Yes.

4 HEARING OFFICER POWELL: -- a witness.

5 MR. GAUDIOSO: Yes. I'm going to be calling Sara Mughal.

6 HEARING OFFICER POWELL: All right. I'm sorry, Sara?

7 THE WITNESS: Hi.

8 HEARING OFFICER POWELL: What's her last name, Mr.
9 Gaudioso? I'm sorry.

10 THE WITNESS: It's Mughal.

11 MR. GAUDIOSO: Can you say that louder, Sara?

12 THE WITNESS: Mughal.

13 HEARING OFFICER POWELL: Okay. Ms. Mughal, if you can
14 raise your right hand?
15 Whereupon,

16 SARA MUGHAL

17 Having been first duly sworn, was called as a witness and
18 testified herein as follows:

19 HEARING OFFICER POWELL: Okay. You are going to have to
20 speak up. We can barely hear you. I don't know if you can put
21 the mic closer to you or something like that, but we can barely
22 -- I can barely hear you. I don't know about the others.

23 THE WITNESS: Did that help?

24 HEARING OFFICER POWELL: Yes. All right. Could you state
25 your name and spell your last name, please?

1 THE WITNESS: My name is Sara Mughal. Last name is
2 spelled M-U-G-H-A-L.

3 HEARING OFFICER POWELL: All right. Mr. Gaudioso?

4 MR. GAUDIOSO: Yes.

5 DIRECT EXAMINATION

6 BY MR. GAUDIOSO:

7 Q Is it okay if I call you Sara?

8 A Uh-huh.

9 Q Thank you, Sara. Okay Sara, by whom are you employed?

10 A Starbucks Coffee Company.

11 Q How long have you been employed by Starbucks?

12 A A little over two years.

13 Q Do you recall what your date of hire was?

14 A I don't recall the exact date. I believe it was in
15 September of 2019.

16 Q And what store do you currently work in?

17 A At the Hopewell store, 7853.

18 Q Have you ever worked in any other store?

19 A No.

20 Q And what is your job title?

21 A Shift Supervisor.

22 Q How long have you been a Shift Supervisor?

23 A Since December of 2020.

24 Q And prior to being a Shift Supervisor, what other job
25 titles have you held?

1 A I was a Barista, and a Barista Trainer I guess
2 technically.

3 Q Can you tell us the period of time that you were a
4 Barista?

5 A I was a Barista from October of 2019 to about May -- oh,
6 sorry, December of 2020.

7 Q And how long were you a Barista Trainer?

8 A I mean I technically still am a Barista Trainer. You
9 don't really lose that title. You're able to train from
10 whenever you start, which was I think I trained I think January
11 of 2020.

12 Q Okay. So at the point where you applied for a job with
13 Starbucks, do you recall the process of applying for a job?

14 A Yeah. So you go on the Starbucks hiring website. You
15 pick out whichever stores you're willing to work at. And then
16 you fill out the application and attach your résumé.

17 Q And that's what you did?

18 A Uh-huh.

19 Q I'm sorry, you have to say yes or no.

20 A Yes. Sorry, yes.

21 Q That's all right. So after you filled out the application
22 -- and by the way, what stores did you apply to? Or indicate
23 that you could work at?

24 A I don't recall exactly which ones. I know that I applied
25 to the Yardley one, the Hopewell one. Maybe one of the ones in

1 Newtown. I'm not sure.

2 Q Okay. And how is it that you came to be employed in the
3 Hopewell store?

4 A So the manager at the time, Samantha Massey (ph), called
5 me and arranged an interview.

6 Q Did any other managers from any of the other stores you
7 indicated contact you?

8 A No.

9 Q Okay. So when Ms. Massey contacted you, then what
10 happened?

11 A She called, asked if I wanted to set up an interview. I
12 did, we met up and then I was hired.

13 Q Okay. Where did you meet up?

14 A We met up at the Starbucks. Hopewell.

15 Q And who did you meet -- I'm sorry? Did --

16 A The Hopewell Starbucks, yeah.

17 Q Oh, I'm sorry. I thought someone else had said something.
18 Oh, I'm sorry. So you met up at the Hopewell store. Was
19 anyone with Ms. Massey?

20 A No.

21 Q And can you describe briefly the interview process?

22 A I basically showed up. She introduced herself. We sat
23 down at a table. She asked like one or two questions. And
24 then started describing the job responsibilities.

25 And I kind of interrupted her, and said do you have any

1 more questions for me? Like you're telling me about the job,
2 but like do you have any more questions about me that tell you
3 if I'm going to get the job? And she oh, no. I decided I was
4 going to hire you the moment I met you. And so that was the
5 end.

6 Q So from at any point in that conversation that you had
7 with Ms. Massey, did she ever -- did you ever notice her either
8 emailing someone or getting on the phone with someone, before
9 saying that she was going to hire you?

10 A No.

11 Q Okay. So when -- so you were hired. Can you tell us
12 about what happened after that? Was there some orientation
13 process?

14 A Yeah. So basically Samantha called me afterward and set
15 up an onboarding. I showed up to the store, and I started to
16 onboard with her, but the store got so busy that she actually
17 had me on the floor that day. So it was interrupted.

18 We didn't get to finish my onboarding that day. And then
19 our managers of the store switched. So I finished my
20 onboarding with the current manager Misty.

21 Q And Misty's last name is?

22 A Knight.

23 HEARING OFFICER POWELL: All right. Could you, Ms.
24 Mughal, explain what onboarding is? I mean I think I have an
25 idea, but I just would like you to --

1 MR. GAUDIOSO: I was going to ask -- Mr. Powell, I was
2 going to actually follow up with that --

3 HEARING OFFICER POWELL: Oh, oh. I'm sorry, Mr. Gaudio. So.
4 I thought you were moving on. Okay.

5 MR. GAUDIOSO: Oh, no, no.

6 BY MR. GAUDIOSO:

7 Q In fact, I wanted to ask if there's a formal name for that
8 onboarding process?

9 A There is. It's called the First Sip at Starbucks. And
10 basically they walk you through like the company's basic
11 history, the company's value and mission statement. We talk
12 about coffee. We talk about what my responsibilities would be
13 as a Barista. What the training process is going to be like.
14 That sort of thing.

15 Q Now when you said they, who specifically --

16 A Oh, this was -- sorry --

17 Q Let me finish asking the question. That's all right.
18 Hold on. That's all right, that's all right. You don't do
19 this. That's all right. So who specifically was involved in
20 this First Sip?

21 A The beginning was Samantha and the second part was with
22 Misty.

23 Q Okay. And were there any other Baristas, or Shift
24 Supervisors, or anyone else involved in this First Sip?

25 A No.

1 Q Okay. All right. So you were describing it started off
2 with Samantha, but he store got busy, so you presumably did
3 whatever work you were doing that night?

4 A Uh-huh.

5 Q Okay. And then there was a switch of Store Manager?

6 A (No audible answer)

7 Q Okay. So when Ms. Knight undertook the completion of your
8 First Sip orientation, what was she doing?

9 A She was basically taking down like financial information.
10 Like how I wanted to be paid. I think she checked my Social
11 Security card. It was more so like the formal things. Like
12 the putting in information and that kind of thing.

13 Q Okay. Now, at some point was there training to be a
14 Barista?

15 A Yes.

16 Q And who performed that training when you were being
17 trained?

18 A Sorry. I had a Barista Trainer.

19 Q And first off do you know the Barista Trainer's name?

20 A Yeah. Her name is Kate Burzachiello.

21 Q Was that a co-worker in the store, or was that someone
22 from the outside of the store?

23 A No. It was a co-worker.

24 Q And you used the term Barista Trainer. Is that a formal
25 position?

1 A Yes.

2 Q Okay. So what did this Barista Trainer do to train you to
3 be a Barista?

4 A So she basically walked me through what all of the
5 different roles are in the store, as far as warming, register,
6 customer support. Obviously, being on bar. And basically
7 anything else I would need to know on the job.

8 Q How long did that onboarding First Sip -- or I'm sorry,
9 not First Sip, Barista training take place? Or how long did
10 that go for?

11 A A few weeks.

12 Q Okay. And at what point are you informed that you've
13 assumedly passed the training?

14 A You're not really informed. You just kind of complete the
15 number of hours of training that they allotted to you. And
16 then you kind of just are scheduled for an actual shift, where
17 you count as part of the floor.

18 Q Okay. Now when you say that you count as part of the
19 floor, what do you mean by that?

20 A Before that, your training. So you're not supposed to be
21 a part of the like daily operations that are going on. You're
22 kind of supposed to be extra. So you don't really count
23 towards the floor, which would be all the partners crafting the
24 drinks, and cleaning, and whatever needs to actually be done.

25 Q Okay. So at some point you're part of the floor. And now

1 you're considered a Barista.

2 A Uh-huh.

3 Q Correct? Okay. Can you tell us what your shift was?

4 A I'm sorry, I didn't understand what you mean.

5 Q What were your hours?

6 A Oh. So I started off at night for a couple weeks. And
7 then I was moved to mornings, because I have open availability.
8 So it would be anywhere between like 6:00 a.m. or 8:00 a.m. to
9 like 3:00 or 4:00.

10 Q And on average how many hours per week did you work?

11 A Close to 40.

12 Q And is that currently the schedule that you're working
13 now?

14 A Right now, I'm at about 32 hours a week.

15 Q And do you still work mornings, or do you work some other
16 time period?

17 A No. So in the past few months I've been moved to nights.
18 So my shift is generally 1:00 to 9:30.

19 Q Did you request a change of your shift, or was that
20 imposed on you?

21 A No, it was just I was asked to move to nights and I did.

22 Q Could you have said no?

23 A I think that would have been more of a discussion, as far
24 as what the store needed in terms of schedule, but --

25 Q Okay. And who would that have -- who would that

1 discussion have been with?

2 A With Misty.

3 Q Okay. So did Misty ask you to make the change to nights?

4 A So actually I started off moving slight -- like part of my
5 week to nights. So me and Misty had a discussion about that,
6 because it was difficult for me to be working in mornings and
7 nights. Obviously in terms of like sleep schedule and like
8 having a personal life. So we had a discussion about that.
9 And she said that she could accommodate me moving to entirely
10 nights.

11 HEARING OFFICER POWELL: All right. Just for
12 clarification. Misty would be Misty Knight the Store Manager?

13 THE WITNESS: Yes.

14 HEARING OFFICER POWELL: Okay.

15 BY MR. GAUDIOSO:

16 Q And when did you move to entirely night shift?

17 A It was during the summer. It was around the end of May of
18 2021.

19 Q And I'm sorry if I already asked you this. Approximately
20 how many hours are you working, now that you're working night
21 shift per week?

22 A Around 32.

23 Q Around 32. Okay. Now, you mentioned at some point you
24 became a Barista Trainer?

25 A (No audible answer)

1 Q Yes? You have to answer affirmatively --

2 A Yes, yes. I did.

3 Q -- so the stenographer can write that down. Okay. How
4 did you become a Barista Trainer?

5 A So Misty asked if I was interested. I said that sounded
6 good. And so it -- she added it to my like computer training.

7 Q Okay. And when you were a training, what is it that you
8 did?

9

10 Q So initially before I trained anyone, I had to sit down
11 with Misty and she went over what she expected me to do, in
12 terms of training. What kind of goals she wanted. What kind
13 of training she wanted specifically in different roles. Like
14 what I should focus on first and then later.

15 And then I had a few shifts scheduled with each person
16 that I was training. And I went through each role that they
17 would be placed in, in the store. The same as I was trained
18 basically.

19 Q Okay. And at some point you became a Shift Supervisor,
20 correct?

21 A Yes.

22 Q How -- what was the process of you becoming a Shift
23 Supervisor?

24 A So basically on the floor one morning Misty mentioned that
25 she had added Barista Trainer to my computer training. I

1 mentioned that I had actually already been through it. She
2 didn't realize that I had already finished it.

3 I asked if the reason she added it was because I was going
4 to train someone? She told me that no, it was because she
5 wanted me to be a Shift Supervisor, and I would need to be a
6 Barista Trainer first. And after that, I agreed to be a Shift.
7 So we scheduled an interview for me to become one, and after
8 that I trained to be one.

9 Q Who was involved in that interview?

10 A It was Misty and a Store Manager from another store in the
11 district.

12 Q Okay. And who made the decision to promote you to Shift
13 Supervisor?

14 A As far as I'm aware, it was Misty.

15 Q Did Misty give you any indication that -- oh, and let me
16 ask a preliminary question. Do you know who your District
17 Manager is?

18 A Yes.

19 Q Who's your District Manager?

20 A Scott Thibedeau.

21 Q Okay. Before promoting you, did Misty give any indication
22 that she had to speak to Mr. Thibedeau before promoting you?

23 A Not that I can recall.

24 Q So when you were promoted to Shift Supervisor, can you
25 describe for the Hearing Officer and the reader of the record

1 how your job changed, or what your job duties were as a Shift
2 Supervisor?

3 A So as a Shift Supervisor I still have a lot of the same
4 responsibilities I did as a Barista, but I have the additional
5 responsibilities of running the floor. I basically decide who
6 is doing what role on the floor. I send them on their breaks.
7 I do more of like -- I do money things, like creating deposits,
8 change orders, counting the safe. That sort of thing.

9 Q When you say change orders, what do you mean by that?

10 A Basically they will -- the money company Brinks will send
11 over change for us, and we have to send back larger bills.

12 Q Oh, change as in like --

13 A Like money change, yes.

14 Q Monetary change. Okay. Thank you. Okay. Are you
15 familiar with a term called Play Builder?

16 A Yes.

17 Q What's your understand of what Play Builder is?

18 A Play Builder is an app on our store iPads that basically
19 guides you in creating the floor that you're running.

20 Q When you say creating the floor, what specifically do you
21 mean?

22 A Basically what you do is you tell it what time of day it
23 is, and how many people that you have currently on your floor
24 that are able to work, that are not on break. And it gives you
25 different roles that it suggests, and you plug in which of your

1 workers you want where.

2 Q Now, do you have any autonomy in deciding who's going in
3 what roles?

4 A Yeah, entirely.

5 Q Can you describe for the Hearing Officer and the reader of
6 the record what you mean by -- what level of autonomy you have?
7 Like what considerations do you make in assigning roles?

8 A So basically let's say there's four people and it's
9 recommending four roles. And let's say those roles are bar,
10 register, warming and cold bar. I would then choose who should
11 be where, based on their skill level, and like their experience
12 level, and how busy it is in the cafe. It's --

13 Q So you have to have -- so is it a true statement that you
14 have to have some awareness and understanding of your co-
15 workers, their strengths and abilities?

16 A Yes, very much so.

17 Q Okay. And has Misty ever -- I'm sorry, Ms. Knight, has
18 she ever second guessed you, with regard to your assignment of
19 individuals in the different positions?

20 A Not at night. In the morning, there's been a couple times
21 where I'll put someone on hand off, and she'll suggest someone
22 else because the person that I put on hand off was maybe not as
23 customer friendly. Other than that, no.

24 Q Okay. Do you have any involvement in the ordering of any
25 of the supplies or product at the store?

1 A I don't anymore. When I worked in mornings, I did.

2 Q Can you describe for the reader of the record what
3 involvement you had?

4 A So we have a daily order. So whoever is the Shift
5 Supervisor that opens does that daily order. And that has more
6 so the perishables like milk, like sandwiches, that sort of
7 thing. And there's like cups and things like that.

8 We also have an order that's done twice a week. And
9 that's called the York order in our store.

10 Q I'm sorry? The York order?

11 A Yes, the York order.

12 Q What is the York order?

13 A I think the company that sends it is either called York or
14 it's in York. We just -- that's like a -- just a store term.

15 Q Okay. And what is it that you're ordering in the York
16 order?

17 A The less frequent items like bagged coffee, like for
18 selling to customers. Some of the refreshers that are not as
19 popular. We used to do caramel in that. Things like straws.
20 Those sorts of things.

21 Q Now, do you have to adjust that based upon usage in any
22 given time frame?

23 A I'm sorry, I didn't understand what you --

24 Q Sure. Let me rephrase that. Is it the same amount that
25 you're ordering all the time, or do you have to see what you

1 need and then order accordingly?

2 A No, no. Yeah. You walk around the store, and you see how
3 much of something you have, and you use your best ability to
4 decide how much to order of each item.

5 Q And when you've made that determination, how do you go
6 about doing that physical ordering?

7 A It's done -- when I was in mornings, it was done on laptop
8 in what's called IMS (ph).

9 Q Okay. You talked a little bit about your hiring
10 experience. Have you ever witnessed Ms. Knight hire other
11 Baristas?

12 A Yes.

13 Q Approximately how many occasions would you say?

14 A Interviewing?

15 Q Yes.

16 A At least 10 I would say.

17 Q Okay. And on those 10 occasions, was she interviewing
18 alone, or was Scott with her? Mr. Thibedeau, was he with her
19 during those interviews?

20 A No. I've never seen Scott do an interview.

21 Q Okay. Have you -- in any of those 10 occasions was it
22 your understanding that any of those applicants were hired?

23 A Yes.

24 Q Why was that your understanding?

25 A Misty would walk back from the cafe where she was sitting

1 with them and let us know. If we asked how'd it go, she would
2 say I hired them.

3 Q And you've been present for Misty saying that?

4 A To me, yes.

5 Q Do you have any idea how the schedule is prepared for your
6 store?

7 A How it's prepared?

8 Q Yes.

9 Q I -- as far as I'm aware, Misty goes into the computer and
10 creates it.

11 Q Okay. Have you ever seen Mr. Thibedeau come in and have
12 any involvement in scheduling matters?

13 A No.

14 Q By the way, how -- in your experience, how many times have
15 you seen Mr. Thibedeau in the store? In the time you've been
16 employed at Hopewell.

17 A Not very many. Personally, I've seen him, I would say,
18 less than 10 times.

19 Q Okay. And that's over --

20 A Over the two --

21 Q Since your -- okay. By the way, have you ever seen -- you
22 were on the chat, when Ms. Pivarnik testified, correct?

23 A Uh-huh.

24 Q Have you ever seen her in your -- in the Hopewell store?

25 HEARING OFFICER POWELL: Oh, could you -- Ms. Mughal, just

1 you nodded you head. Could you just verbalize what your answer
2 was?

3 THE WITNESS: Oh, no. I was going to answer. I'm sorry.

4 HEARING OFFICER POWELL: Yeah.

5 THE WITNESS: I have never met Jen.

6 BY MR. GAUDIOSO:

7 Q Have you ever had any issues with another hourly partner,
8 either a Barista or a Shift Supervisor at your store?

9 A No, not a serious one, no.

10 Q Okay. Have you ever had any issues that you had to take
11 up with Ms. Knight, with any Barista or Shift Supervisor?

12 A Yeah. Like day-to-day kind of things, yes.

13 Q Such as? Can you give us an example?

14 A Like if a partner was having a trouble -- having trouble
15 like grasping certain things. If they were having trouble
16 learning things. If certain like quality control things were
17 not being followed in the store. That sort of thing.

18 Q Okay. Can you give -- when you say quality control, can
19 you give an example of a quality control issue that you've had?

20 A One of the things that's really important in our store is
21 dating all of the food items properly. So if there's an issue
22 where people are dating them improperly, I would go to Misty
23 just to let her know that that's happening. And that we should
24 all be aware of what the actual dating protocol is.

25 Q Okay. For your day-to-day issues such as that, would you

1 ever go to anyone besides Misty?

2 A No.

3 Q Sara, have you worked any shifts in other stores other
4 than the Hopewell store?

5 A Yes.

6 Q How many times in the more than two years you've been at
7 the Hopewell store have you worked in another location?

8 A Three.

9 Q Three times?

10 A Uh-huh.

11 Q Now is that three individual shifts, or was that multiple
12 days three different times?

13 A Three individual shifts.

14 Q Okay. Do you remember the circumstances involved in you
15 working those three individual shifts in a different store?

16 A Yeah. So one I was at the Hopewell store, and they said
17 that the Mercer Mall store needed help. And would I cover a
18 shift later that day? And I said yes. Another was to cover a
19 shift for someone at the Mercer Mall store who asked me to
20 cover the shift there. And the other was to cover a shift for
21 someone at Bordentown.

22 Q So on those two last examples, where you covered someone
23 else's shift --

24 A Uh-huh.

25 Q -- did those people reach out to you and ask?

1 A Yeah.

2 Q So these are individuals that you knew?

3 A Uh-huh.

4 Q You have to say yes or no.

5 A Yes. I'm sorry, yes.

6 Q Okay. And presumably you could have said no?

7 A Yes.

8 Q Same question when you worked at Mercer, and you were
9 asked to go there. First off, who asked you?

10 A The one time it was someone who worked there. The other
11 time it was Misty.

12 Q And could you have said no, when Misty asked you?

13 A Yes.

14 Q Would anything have happened to you, if you said no?

15 A No.

16 Q In the time period that you worked at Hopewell, how often
17 would you say you have observed someone who doesn't -- who's --
18 sorry. Let me withdraw that question. Are you familiar with
19 the term home store?

20 A Yes.

21 Q Is your home store Hopewell?

22 A Yes.

23 Q Okay. So someone whose home store is not Hopewell, have
24 you ever observed an individual from outside of Hopewell
25 working in the Hopewell store?

1 A Yes.

2 Q In the time that you have been employed at Hopewell, how
3 many times would you say you've observed that?

4 A I couldn't give an exact number, but I could say it was
5 less than once a month.

6 Q Okay. So less than once a month, for each month that
7 you've worked in Hopewell?

8 A Yeah.

9 Q Okay. And when this has happened, in the times that
10 you've observed it, has that individual worked a single shift
11 or multiple shifts?

12 A I can only remember one time where it was more than one
13 shift. There was one partner we borrowed for I think two
14 shifts that week. Other than that, it was single shifts.

15 Q Okay.

16 HEARING OFFICER POWELL: If I may, just for clarification
17 for the reader of the record, when you say that you mean that
18 the one person may have worked one shift in let's say January.
19 You don't see that person again. Then another person may come
20 in and work one or two shifts in February, and you don't see
21 that. So it's been different people each time?

22 THE WITNESS: Yeah.

23 HEARING OFFICER POWELL: Okay.

24 MR. GAUDIOSO: If you need to take a day off, and you want
25 to switch with someone else, is there a process that you go

1 through to get coverage for you?

2 THE WITNESS: So if we're already scheduled for a shift
3 and want someone else to cover it?

4 BY MR. GAUDIOSO:

5 Q Yes.

6 A Oh. So what we would do is there's two ways we can do
7 that. Either we can -- if the other person has agreed, I can
8 can into the partner app, the Partner Hours app, and I can swap
9 it through there, or I can text Misty and ask her for her
10 approval.

11 Q Okay. Do you have to let Scott know or Mr. Thibedeau
12 know?

13 A No.

14 Q Okay. And has there ever been a situation where you've
15 asked another hourly partner to cover your shift, where Misty
16 said no, that's not appropriate, or no, I'm not going to
17 permit that?

18 A No.

19 Q Okay. What's the process by which you might want to
20 schedule a vacation, or some period of time off more than just
21 a single day?

22 A We do so more than three weeks in advance. And we would
23 go into our Partner Hours app, and we would go into our Partner
24 Hours app, and we would go into the calendar and request that
25 time off.

1 Q And you had to get approval for that time off?

2 A Yes.

3 Q And when you get approval, does the app indicate who does
4 the approving?

5 A Yes.

6 Q And in the times where you have sought such approval, who
7 provided it?

8 A Our manager Misty.

9 Q Have you ever gone through any sort of employee evaluation
10 regarding your job performance?

11 A We have what's called a partner development conversation.
12 That's I think the closest to what you're describing.

13 Q Okay. How often does that conversation happen, or how
14 many -- let me rephrase the question. How many times have you
15 had that conversation?

16 A I've had that conversation twice, in the two years I've
17 worked.

18 Q And who have you had that conversation with?

19 A With Misty.

20 Q And are you familiar with the term called one-on-ones?

21 A Yes.

22 Q What are one-on-ones?

23 A As far as I'm aware, one-on-ones are meetings that our
24 Store Manager Misty has with generally the Shift Supervisors.
25 They're about weekly. Not as often recently, but they were

1 weekly. And it was basically just a little sit down with here,
2 where we would check in and she would let us know if she had
3 any concerns and vice versa.

4 Q And as the term suggests one-on-one, is that one Shift
5 Supervisor with Misty for each meeting?

6 A Yes.

7 Q Okay. So you're not having it as a group?

8 A No.

9 Q Okay. Has Mr. Thibedeau ever been involved in one of
10 those one-on-ones?

11 A No.

12 Q And to your knowledge he was not involved in your
13 evaluation, right?

14 A No.

15 Q Certainly Ms. Pivarnik was never involved in any of your
16 evaluations to your knowledge?

17 A No.

18 MR. GAUDIOSO: All right. Sara, thank you. That's all I
19 have right now, subject to any redirect.

20 HEARING OFFICER POWELL: Sure. Ms. Markey?

21 MS. MARKEY: If I could just give five minutes?

22 HEARING OFFICER POWELL: Sure. Off the record, five
23 minutes.

24 COURT REPORTER: We're off the record.

25 (Whereupon, a brief recess was taken)

1 HEARING OFFICER POWELL: On the record.

2 COURT REPORTER: We're on the record.

3 HEARING OFFICER POWELL: All right. Ms. Markey?

4 MS. MARKEY: Thank you.

5 CROSS-EXAMINATION

6 BY MS. MARKEY:

7 Q Ms. Mughal, just so I don't mispronounce your name, is it
8 okay if I call you Sara?

9 A Sure. No problem.

10 Q Thank you. And I just want to make sure, you're currently
11 testifying by yourself, correct?

12 A Yeah.

13 Q And you don't have any notes with you?

14 A No.

15 Q After your interview with Misty, it was a few days before
16 you started work, right?

17 A I actually interviewed with Samantha Massey.

18 Q I'm sorry. To the extent that you interviewed with Ms.
19 Massey, how soon after did you start work?

20 A I honestly don't remember exactly how long it was.

21 Q It wasn't that day, correct?

22 A No, it was not.

23 Q And you don't know what conversations if any she had prior
24 following your interview, before you started work, correct?

25 A No.

1 Q And there's some preliminary things like background
2 checks, that are typically done before you start, and before
3 you can be offered employment, correct?

4 A Yeah.

5 Q If you could just speak up? I didn't hear that.

6 A Yes.

7 Q And you're not aware of what conversations if any Ms.
8 Massey had, regarding your hiring before you were hired, are
9 you?

10 A No.

11 MS. MARKEY: I'm not sure if it's just mine. I'm not
12 hearing her responses. If anybody else having that difficulty?

13 HEARING OFFICER POWELL: Yeah.

14 THE WITNESS: I'm sorry.

15 HEARING OFFICER POWELL: Ms. Mughal --

16 THE WITNESS: No.

17 HEARING OFFICER POWELL: -- if you could repeat that,
18 because we didn't hear it?

19 THE WITNESS: Okay. No.

20 BY MS. MARKEY:

21 Q You testified on direct that you've only observed about 10
22 interviews during your time at the Hopewell store, is that
23 correct?

24 A I said at least 10.

25 Q At least 10.

1 MS. MARKEY: And I'm sorry, I'm still having the
2 difficulty hearing her.

3 HEARING OFFICER POWELL: All right, all right. You -- did
4 you switch positions or something? Because we are having a
5 little bit more trouble. Off the record.

6 (Whereupon, a brief recess was taken)

7 COURT REPORTER: We're on the record.

8 HEARING OFFICER POWELL: All right. Ms. Markey, you may
9 continue.

10 MS. MARKEY: Sara, you had said that you had observed
11 Misty do at least 10 interviews, is that correct?

12 THE WITNESS: Yes.

13 BY MS. MARKEY:

14 Q And for about the past six months or so you've worked
15 around 32 hours per week, is that correct?

16 A Yes.

17 Q And the store is open over 100 hours per week, correct?

18 A I hadn't counted, but it's usually 5:00 a.m. to 9:00 p.m.

19 Q I'm not going to pretend to do the math quick enough in my
20 head to tell you whether that adds up, but my understanding is
21 the store is open over 100 hours per week. Does that sound
22 right to you?

23 A Yeah.

24 Q So you're only there for about a third of the time,
25 correct?

1 A I guess that would be the math.

2 Q And so to the extent you've testified about anything that
3 you've been observed, your observations are limited to about a
4 third of the store's operations hours, correct?

5 A For the past six months, yes.

6 Q And before that you were working 40 hours a week on
7 average, correct?

8 A Almost.

9 Q So even then, to the extent the store is open more than
10 100 hours per week, you were still there for just a little more
11 than one third of the time it was open, correct?

12 A Yes.

13 Q You also testified that you because that Misty had made
14 the decision to promote you to Shift Supervisor, is that
15 correct?

16 A Yes.

17 Q You don't know who if anyone that Misty spoke to about
18 that decision, do you?

19 A No.

20 Q And you don't know whether or not she discussed that with
21 Scott the District Manager, correct?

22 A No. Oh, yeah that's correct.

23 Q You don't know, correct?

24 A I do not know, yes.

25 Q And you were asked some questions on direct examination

1 about whether you had ever had any issues with partners and
2 issues in the store. You talked about some quality control
3 issues with dates that you would tell Misty. Have you ever
4 been involved in any kind of an incident involving customers or
5 other partners?

6 A What kind of incident?

7 Q To the extent you testified in response to a question
8 about issues with partners, I'm asking generally about the same
9 kind of issues. Have you ever been involved in any issues with
10 a customer or a partner?

11 A Not serious issues, no.

12 Q And you've never issued discipline, correct?

13 A No.

14 Q You've never recommended discipline to Misty, correct?

15 A No.

16 Q You testified on direct examination regarding scheduling.
17 And that it was understanding that Misty completes the
18 schedules, correct?

19 A Yes.

20 Q You're not there when she completes the schedules, right?

21 A I've seen her making them.

22 Q How many times have you seen her making them?

23 A I couldn't count. It's so many.

24 Q And were you there for the duration of the time that she
25 making or creating the schedule?

1 A No.

2 Q So you saw her on the computer doing the schedule?

3 A Yes.

4 Q You don't know who if anyone she talks to before she
5 prepares the schedule, right?

6 A Correct.

7 Q Are you aware of her talking with the DM, with Scott,
8 about any scheduling or staffing issues?

9 A No.

10 Q You've never been a part of any of those conversations?

11 A No.

12 MR. GAUDIOSO: Can we lay a foundation of such? I'm going
13 to object. That -- the way you asked that question, it
14 presumes that those conversations have happened.

15 MR. GAUDIOSO: I believe Ms. Pivarnik had testified about
16 that. So we've --

17 HEARING OFFICER POWELL: Whoa, whoa, whoa, whoa. Stop.
18 I'm sorry. Ms. Pivarnik testifying about conversations between
19 Scott -- or alleged conversations between Scott and Ms. Knight,
20 I think are of no relevance. Mr. Thibedeau did not testify
21 consistent with what Ms. Pivarnik testified to.

22 MS. MARKEY: I don't think that that's correct, but I can
23 lay a foundation.

24 MR. GAUDIOSO: Please.

25 HEARING OFFICER POWELL: All right. Why don't you go back

1 and lay a foundation, because I honestly -- I don't remember
2 either -- I don't remember that. So go back and allow the --
3 lay the foundation, Ms. Markey.

4 BY MS. MARKEY:

5 Q Sara, you said that you've seen Misty doing the schedule
6 on the computer, correct?

7 A Yes.

8 Q And you've said that you don't see her doing the duration
9 of the schedule, correct?

10 A Correct.

11 Q Imagine it takes a good amount of time to complete the
12 schedule, is that correct?

13 A That's what I've been told by her, yes.

14 Q Are you aware of her having any conversations with anyone
15 about the schedule?

16 A About creating it, no.

17 Q Are you aware of her having any conversations with anyone
18 about staffing at the store?

19 A No.

20 Q You've trained Russ (ph), one of the other Shift
21 Supervisors at your store, correct?

22 A Yes.

23 Q And is Russ currently a Barista Trainer as well?

24 A Yes.

25 Q And are you aware of his training Baristas who then were

1 subsequently going to be in a different home store than
2 Hopewell?

3 A I believe he actually trained a Shift Supervisor for
4 another store.

5 Q Was that somebody by the name of Tom Barnes (ph)?

6 A I don't remember his name.

7 Q And that training was conducted in Hopewell, correct?

8 A Yes.

9 Q But that individual never had Hopewell as a home store.
10 They went and were a Shift Supervisor with another store,
11 correct?

12 A That store was brand new, and had not yet opened, but yes.

13 Q And is there another individual by the name of Christina
14 Ibel (ph)? Are you familiar with her?

15 A No.

16 Q Are you aware of anybody with the home store -- with the
17 Mercer Mall home store being trained in the Hopewell store?

18 A I don't remember any.

19 Q You've attended district round tables, right?

20 A I attended one Shift Supervisor round table Zoom meeting.

21 Q And that was with other Shift Supervisors from district
22 761?

23 A Yes.

24 Q You're also a member of the Shift Forward program,
25 correct?

1 A I just recently enrolled, yes.

2 Q And that's a program -- a voluntary program with just
3 Shift Supervisors from district 761, where you -- correct?

4 A Yes.

5 Q And in that program you work with Scott Thibedeau, the DM
6 from district 761, correct?

7 A Yes.

8 Q And through the Shift Forward program you receive training
9 on leadership and Starbucks operations, correct?

10 A We've had one meeting, but yes, that is the goal.

11 MS. MARKEY: I don't have any further questions at this
12 time.

13 HEARING OFFICER POWELL: All right. Miss -- I'm going to
14 call you Sara too. Is that okay?

15 THE WITNESS: No problem.

16 HEARING OFFICER POWELL: Okay. Sara, when you testified
17 before when the person has come in for -- to do a shift or so,
18 you said that happens, right? And you said it happens about
19 once a month?

20 THE WITNESS: Yeah. Like on average. I -- yeah.

21 HEARING OFFICER POWELL: Okay. Do you know why that
22 person or those people come in to do the shift?

23 THE WITNESS: In the instances I can remember, there's
24 like a gap in the schedule or someone had to isolate. That
25 sort of thing.

1 HEARING OFFICER POWELL: Okay. And that -- was it -- do
2 you know if it was voluntary for that person, or was it
3 required?

4 THE WITNESS: I've never heard of it being involuntary.
5 But I can't tell you exactly the people. Like --

6 HEARING OFFICER POWELL: Okay.

7 THE WITNESS: -- I didn't ask.

8 HEARING OFFICER POWELL: But you said you've never heard
9 of it being involuntary?

10 THE WITNESS: Yeah.

11 HEARING OFFICER POWELL: All right. All right. Now, you
12 were asked about an issue that you may have had with another
13 partner at the store or with a customer. Could you -- how is
14 that dealt with, as far as you know?

15 THE WITNESS: So if it's another partner and there's like
16 an ongoing issues, obviously I would try to address is myself
17 first. The adult thing to do is speak to them. Have an honest
18 conversation. If that is not working, then I would reach out
19 to Misty about it.

20 HEARING OFFICER POWELL: Okay. And Misty is again the
21 store super --

22 THE WITNESS: Manager.

23 HEARING OFFICER POWELL: Store Manager.

24 THE WITNESS: Uh-huh.

25 HEARING OFFICER POWELL: All right. Would you -- is it --

1 would you ever go beyond Misty?

2 THE WITNESS: If it didn't feel like she was addressing
3 it, we are told to go to Partner Resources. It's like a phone
4 number that we can call. I have not had to do so, but that's
5 what I would do.

6 HEARING OFFICER POWELL: Okay. To Partner Resources?

7 THE WITNESS: Uh-huh.

8 HEARING OFFICER POWELL: So it wouldn't go up to Mr.
9 Thibedeau, or you wouldn't go to Mr. Thibedeau?

10 THE WITNESS: I -- yeah, no, I would not.

11 HEARING OFFICER POWELL: And you wouldn't go to Ms.
12 Pivarnik?

13 THE WITNESS: I genuinely have never met or her seen her.

14 HEARING OFFICER POWELL: Okay. All right. Okay. Oh,
15 just one. Just as curiosity. The store, the Hopewell store,
16 is it open six days a week or seven days a week?

17 THE WITNESS: Seven days.

18 HEARING OFFICER POWELL: Also seven days?

19 THE WITNESS: Uh-huh.

20 HEARING OFFICER POWELL: Okay. All right. Thank you.
21 That's all I have. Mr. Gaudioso?

22 MR. GAUDIOSO: Yes, just a few redirect.

23 REDIRECT EXAMINATION

24 BY MR. GAUDIOSO:

25 Q Sara, when you worked day shift --

1 A Uh-huh.

2 Q -- did your schedule overlap with Misty's?

3 A Pretty much every day, yes. She's in 7:00 to 3:30. And
4 when I was working mornings those were pretty much my shifts.
5 Maybe started a little earlier and ended a little earlier, but
6 just about.

7 Q So when you were testifying with regard to your
8 observation of her interviews of potential new Baristas --

9 A Yes.

10 Q -- was that all during that period of time that you worked
11 day shift?

12 A Yes. I have seen -- no, sorry. I actually have seen some
13 interviews since I've worked at nights too, because I start at
14 1:00 p.m. So there is some overlap still

15 Q Okay. Has Misty ever complained in your presence about
16 preparing schedules?

17 A Yes.

18 Q Can you explain what the circumstance was and what she
19 said?

20 A She --

21 MS. MARKEY: I'm just going to object to the extent it's
22 hearsay, and it's coming in for the truth of the matter I
23 believe.

24 MR. GAUDIOSO: You asked some questions, and actually we
25 both did, but you followed up with questions regarding

1 scheduling. It's not hearsay. It's going to be an admission
2 against interest. It should be let in.

3 MS. MARKEY: My questions were about the existence of
4 conversations. Not the content of the conversations, but
5 whether or not she ever heard any conversations, to the extent
6 two people talked. Not about the content of that information.
7 Totally different.

8 MR. GAUDIOSO: Well, you may certainly bring --

9 HEARING OFFICER POWELL: All right.

10 MR. GAUDIOSO: -- Ms. Knight, a representative of the
11 store as you rebuttal witness, to what she's about to testify
12 to if Mr. Powell allows it.

13 HEARING OFFICER POWELL: All right. What was your
14 question, Mr. Gaudioso?

15 MR. GAUDIOSO: Has Ms. Knight ever complained in Sara's
16 presence, regarding the creation of the schedules. She replied
17 in the affirmative. And I followed up with what was the
18 circumstance of that.

19 MS. MARKEY: I believe you asked her what she said.

20 MR. GAUDIOSO: Well, okay, yes. What did she say?

21 HEARING OFFICER POWELL: All right. I think you're -- all
22 she can testify as to is what she heard, and --

23 MR. GAUDIOSO: And that's all I'm asking her.

24 HEARING OFFICER POWELL: Okay. So I'm going to allow
25 that, because you're not -- it doesn't seem to me you're saying

1 for the truth of the matter asserted. You're just asking her
2 what she heard.

3 MR. GAUDIOSO: Yes.

4 HEARING OFFICER POWELL: What the words she heard.

5 MR. GAUDIOSO: Yes.

6 MS. MARKEY: But if I may ask, Mr. Powell, what else is it
7 coming in for then under these circumstances? Because I
8 believe he was saying it was an admission, not that it was --

9 MR. GAUDIOSO: Well --

10 MS. MARKEY: -- an exception to hearsay, and not coming --
11 or not hearsay. He was saying it was an exception to hearsay,
12 which means it is coming in for the truth. That's different
13 than saying that it is not hearsay, because it's not coming in
14 for the truth of the matter. So I would just like an offer of
15 proof, as to what the basis is for it coming in, if it's not
16 coming in for the truth of the statement.

17 MR. GAUDIOSO: Then let's do it both ways. Initially, it
18 should come in for the truth of the statement, as she will
19 testify to. Ms. Knight is a Store Manager, excluded in the
20 petition. A representative of Starbucks. And given that we've
21 already had testimony from this witness, direct and cross, with
22 regard to the creation of the schedule, she should be allowed
23 to testify, state what she knows as a firsthand witness to a
24 conversation with Misty, that will be an admission against
25 interest for the store or for Starbucks.

1 HEARING OFFICER POWELL: Okay. Now I'm a little bit --
2 because I thought it was something that -- all right. Let's
3 start. Sara, so you were there when Misty was doing the
4 schedules, correct?

5 THE WITNESS: Yes.

6 HEARING OFFICER POWELL: Okay. And Misty made comments
7 about that schedule --

8 THE WITNESS: Yeah.

9 HEARING OFFICER POWELL: -- in your presence?

10 THE WITNESS: Yes.

11 HEARING OFFICER POWELL: Were they directed to you, or was
12 she just speaking out loud, and you happened to hear them?

13 THE WITNESS: No, to me.

14 HEARING OFFICER POWELL: So she was speaking to you about
15 the schedule itself?

16 THE WITNESS: Yes.

17 HEARING OFFICER POWELL: Okay. All right. Off the
18 record.

19 COURT REPORTER: We're off the record.

20 (Whereupon, a brief recess was taken)

21 COURT REPORTER: We're on the record.

22 HEARING OFFICER POWELL: Okay. I'm going to allow Mr.
23 Gaudioso to ask that question, and for the -- for Sara to
24 answer that question.

25 MR. GAUDIOSO: Okay. Sara, do you need to have the

1 question asked again?

2 THE WITNESS: Sure. Yes, please.

3 CONTINUED REDIRECT EXAMINATION

4 BY MR. GAUDIOSO:

5 Q Okay. Has Ms. Knight ever complained in your presence
6 about preparing the schedules?

7 A So I can think of two relevant instances. The first is
8 one in which she was saying that it was frustrating to her that
9 people kept trying to change their availability, because it
10 made it really difficult for her to make the schedule. Another
11 instance was her talking about how frustrating it was to make
12 the schedule, and then someone would have to isolate, and she
13 would have to redo it over and over.

14 Q And in either of those two instances, did she give any
15 indication to you that she had to speak to Mr. Thibedeau, in
16 making that schedule?

17 A No.

18 MR. GAUDIOSO: Okay. I'd like to move on to a different
19 subject very briefly, if -- assuming there's no follow up from
20 anyone -- or I'm sorry, from Mr. Powell regarding that
21 particular issue.

22 HEARING OFFICER POWELL: No.

23 MR. GAUDIOSO: Okay.

24 HEARING OFFICER POWELL: You can go on. Ms. Markey will
25 have an opportunity to --

1 MR. GAUDIOSO: Sure.

2 HEARING OFFICER POWELL: -- recross.

3 BY MR. GAUDIOSO:

4 Q Sara, you were describing this meeting called Shift
5 Forward?

6 A Uh-huh.

7 Q You have to say yes or no.

8 A Oh, yes.

9 Q Okay. And you've been to a single meeting?

10 A Yes. The meeting I believe was two weeks ago. It was
11 post us filing. It was like after we filed.

12 Q Okay. And what was discussed in this Shift Forward
13 meeting?

14 A Well, this was the first one. So it was basically just
15 everyone introducing themselves, and then we talked. It was
16 like us watching a couple videos about how to observe a floor
17 and analyze it.

18 Q Okay. How many other Shift Supervisors were involved in
19 this Shift Forward meeting?

20 A As far as I could see, probably like six or seven.

21 Q Was this on a Zoom meeting?

22 A Yeah, this was a virtual.

23 Q And were these Shift Supervisors from different stores in
24 the district or just your store?

25 A Different stores.

1 Q And was there any conversation in this Shift Forward
2 meeting that was specific to the Hopewell store? Sorry. Thank
3 you.

4 A No.

5 MR. GAUDIOSO: Okay. Thank you. That's all of my
6 recross. I'm sorry, redirect --

7 HEARING OFFICER POWELL: All right. Ms. Markey?

8 MS. MARKEY: Just a couple.

9 HEARING OFFICER POWELL: Sure.

10 RECROSS-EXAMINATION

11 BY MS. MARKEY:

12 Q You said that you started working the evening schedule,
13 correct?

14 A Yes.

15 Q And that was about six months ago?

16 A Yes.

17 Q And your schedule has not overlapped more than an hour or
18 two with Misty, since you've started the night schedule,
19 correct?

20 A Correct.

21 Q You signed up for the Shift Forward program late, correct?

22 A Yes.

23 Q So invitations to that program were sent out prior to that
24 first meeting, correct?

25 A Yes.

1 Q And the program was in existence in fact before the
2 petition, correct?

3 A Yes.

4 Q And that first meeting -- there's going to be future
5 meetings, correct?

6 A There will be, yes.

7 Q You testified that you would not reach out to your DM
8 Scott, if you had any issues with other partners, correct?

9 A Correct.

10 Q You've seen the Make the Right Call poster in the back of
11 the store, correct?

12 A Yes.

13 Q And that includes a number of resources where you can
14 reach out to, if you feel that you're experiencing any
15 harassment, bullying or discrimination, correct?

16 A Correct.

17 Q And that lists Misty your Store Manager, correct?

18 A Yes.

19 Q It also lists your District Manager Scott and his contact
20 information, correct?

21 A It does.

22 Q And so reading that poster, or knowing that that poster
23 exists, you understand that you can reach out to Scott with any
24 issues that you have with partners, correct?

25 A That poster was put up maybe a month ago. Maybe a month

1 and a week. So prior to that, no.

2 Q Prior to that, had you ever asked anybody if you had an
3 issue who you could reach out to?

4 A No.

5 Q And I believe you had testified that you've never had any
6 issues that you feel that you've needed to reach out to anyone
7 else, correct?

8 A Beyond Misty, yes, that's correct.

9 MS. MARKEY: No further questions.

10 HEARING OFFICER POWELL: All right. All right, Sara. You
11 testified earlier, and I missed this first time around, that
12 there was some type of interview I think you went on, where
13 there was a -- I think you said Misty interviewed you, and a
14 second store -- a manager from a different store?

15 THE WITNESS: Yes.

16 HEARING OFFICER POWELL: Okay. What was that?

17 THE WITNESS: That was my interview to promote to Shift
18 Supervisor.

19 HEARING OFFICER POWELL: Okay. Is -- was there any other
20 instance where a Store Manager from a different store was
21 brought in to talk to you?

22 THE WITNESS: To talk to me?

23 HEARING OFFICER POWELL: Yeah. To talk to you, or
24 instance with your job with Misty, or was that the one and only
25 time?

1 THE WITNESS: That was the one and only time.

2 HEARING OFFICER POWELL: Okay. Do you know what store
3 that Store Manager was from?

4 THE WITNESS: Yes, the Mercer Mall store.

5 HEARING OFFICER POWELL: Okay. Do you know why that
6 person was brought in?

7 THE WITNESS: To interview me?

8 HEARING OFFICER POWELL: Yes.

9 THE WITNESS: It was actually a Zoom, but why that person
10 in particular you mean?

11 HEARING OFFICER POWELL: Yes, yes.

12 THE WITNESS: No, I don't know.

13 HEARING OFFICER POWELL: Okay. Do you know are -- is this
14 -- is that routine, where more than one manager is brought in -
15 - Store Manager is brought in for interviews?

16 THE WITNESS: I think it's usually two, as far as I'm
17 aware.

18 HEARING OFFICER POWELL: Okay. And is that for when you
19 were being promoted to the Shift Supervisor position?

20 THE WITNESS: Yes.

21 HEARING OFFICER POWELL: Okay. All right. I don't have
22 anything further.

23 All right. If there's nothing further, thank you very
24 much, Sara.

25 THE WITNESS: No problem.

1 HEARING OFFICER POWELL: All right. Good night.

2 MR. GAUDIOSO: Thank you, Sara.

3 HEARING OFFICER POWELL: All right. Mr. Gaudioso, do you
4 have another witness?

5 MR. GAUDIOSO: Yes. Hailey Kennedy (sic).

6 HEARING OFFICER POWELL: Okay. Ms. Kenny, can you -- you
7 can unmute yourself. All right. Can you raise your right
8 hand, please?
9 Whereupon,

10 HAILEY KENNEY

11 Having been first duly sworn, was called as a witness and
12 testified herein as follows:

13 HEARING OFFICER POWELL: I'm sorry, you said yes?

14 THE WITNESS: Yes.

15 HEARING OFFICER POWELL: Okay. Once again, if you can --
16 during the questioning, if you can speak up as loudly as
17 possible, so we can all hear you? And possibly sit closer to
18 your computer or wherever, that would probably be a little
19 helpful.

20 THE WITNESS: Is my sound okay?

21 HEARING OFFICER POWELL: Yes. That's actually pretty
22 good. All right. Can you state your name and spell your last
23 name for us?

24 THE WITNESS: My name is Hailey Kenney. Last name spelled
25 K-E-N-N-E-Y.

1 HEARING OFFICER POWELL: All right. And Ms. Kenney, you
2 are -- where are you right now?

3 THE WITNESS: I am in my bedroom.

4 HEARING OFFICER POWELL: You're by yourself?

5 THE WITNESS: By myself.

6 HEARING OFFICER POWELL: Okay. Do you have any notes or
7 anything around you?

8 THE WITNESS: I do not.

9 HEARING OFFICER POWELL: All right. Okay. All right. Do
10 you have your cell phone or anything?

11 THE WITNESS: I have my cell phone turned off.

12 HEARING OFFICER POWELL: Okay, great. All right, Mister -
13 - I'm sorry, Ms. Markey, do you want to ask her about --
14 anything about the circumstances where she's testified?

15 MS. MARKEY: I don't believe so.

16 HEARING OFFICER POWELL: Okay. All right. Mr. Gaudio, so,
17 you can continue. You can go ahead.

18 MR. GAUDIOSO: Yes.

19 DIRECT EXAMINATION

20 BY MR. GAUDIOSO:

21 Q Good afternoon, Ms. Kenney. May I call you Hailey?

22 A Yes, you may.

23 Q Thank you, Hailey. Hailey, are you currently employed?

24 A Yes.

25 Q By whom?

1 A By Hopewell Starbucks.

2 Q And when were you hired by the Hopewell Starbucks?

3 A I don't remember the official date of hire, but my first
4 day was December 1st 2021.

5 Q Okay. So it's a relatively short period of time?

6 A Yes.

7 Q Okay. Do you remember the circumstances of how you came
8 to apply and be hired at Starbucks?

9 A I had been submitting applications onto Indeed. And
10 minutes after I had submitted Indeed applications I had
11 received a call from Misty.

12 Q Misty? I'm sorry, Misty being?

13 A The Store Manager, correct.

14 Q Okay.

15 A She --

16 HEARING OFFICER POWELL: Misty Knight?

17 THE WITNESS: Misty Knight, yes. She gave me a call. Let
18 me know which store was hiring me, because I had applied to a
19 different Starbucks. And asked if she wanted me -- if we
20 wanted to do an interview.

21 She also made sure that I had applied through the
22 Starbucks website. So I had two applications submitted. One
23 through Indeed, one through Starbucks.

24 BY MR. GAUDIOSO:

25 Q Now, you said it was minutes after you submitted your

1 résumé through Indeed that you got the call from Ms. Knight?

2 A So I was submitting several applications to different
3 locations, not even Starbucks-related. But since I did a
4 couple Starbucks locations, I also went onto the website. And
5 just to be thorough applied to the same stores I did on Indeed.
6 So after I was done that, I had received a call from Misty.

7 Q Okay. Did you receive any calls from any other Store
8 Managers at any of the other Starbucks locations?

9 A I did not.

10 Q Okay. So when Ms. Knight contacted you, what was the gist
11 of the conversation?

12 A Basically if wanted to schedule an interview. I said yes,
13 and we scheduled an interview for that next week. And that was
14 really the gist of the call. It was a very brief call.

15 Q Okay. And presumably the following week you had an
16 interview with Ms. Knight?

17 A I did.

18 Q Okay. Where was that interview? Where did that take
19 place?

20 A It took place in the cafe of Hopewell Starbucks.

21 Q Was anyone else present, when you had this interview?

22 A No.

23 Q And can you tell us what transpired in the interview?

24 A So she had her laptop with her, and she was asking me
25 basic interview questions. I was responding. When she asked

1 me if I had any questions, I asked her.

2 Then she said I would like to hire you. When would you
3 like to start? And I was working at another job. So I needed
4 to give it two weeks, so I could do a two weeks' notice to my
5 current -- the previous place of employment.

6 And then she told the current working Baristas that were
7 on the floor hey, we have a new hire. This is Hailey. And
8 then I said hello to them, and then I left.

9 Q Okay. Did you observe Ms. Knight contacting Mr.
10 Thibedeau? I'm sorry. I should lay a foundation first. Do
11 you know who Scott Thibedeau is?

12 A I do.

13 Q Who is he?

14 A He is the District Manager.

15 Q Okay. Prior to Ms. Knight saying that she was going to
16 hire you, did you witness her contact Mr. Thibedeau at any
17 point in your interview?

18 A I did not witness any contact that I knew of.

19 Q Okay. So what is your current job title?

20 A I am currently a Barista.

21 Q Okay. And what is your schedule?

22 A So I have recently just started to get a footing of like
23 what my steady schedule is going to be. I work mornings, earl
24 mornings, every day except Monday or -- not, Monday and Friday,
25 Friday and Saturday. And sometimes less than that even. So

1 like sometimes I'll have like Wednesday or Monday off.

2 Q Was that your schedule to begin with?

3 A That was not my schedule to begin with. I had open --

4 Q What was your --

5 A -- availability.

6 Q -- schedule to begin with? I'm sorry?

7 A I had open availability.

8 Q What does that mean?

9 A So basically I let Misty know that I could work at any
10 given time. I was set to like mornings and mid-day almost
11 entirely for that time. And it was also a holiday. So I was
12 getting as many hours as possible.

13 Q Okay. Have you ever worked at night?

14 A The latest I've worked is 5:00 p.m.

15 Q Okay. Does your shift generally overlap with Misty's?

16 A Yes.

17 Q Okay. Do you see her frequently in the store?

18 A I do.

19 Q Okay. Have you ever observed her interview any other
20 applicants for a job at Starbucks Hopewell?

21 A One that I can remember.

22 Q Okay. Was anyone else involved in that interview that you
23 observed?

24 A No.

25 Q And was the result of that, that that individual was

1 hired?

2 A Yes.

3 Q Do you recall if that person was hired on the spot, or you
4 found out --

5 A I don't --

6 Q -- later on?

7 A -- know.

8 Q You don't know? Okay. Are you currently in Barista
9 training or have you completed it?

10 A I have completed it.

11 Q Who did you training?

12 A So the day-to-day training, when I was like doing official
13 training hours, it was done by Shala Sween (ph), who is another
14 Barista for the store.

15 Q The Hopewell store?

16 A Correct.

17 Q Okay. Excuse me. Have you ever worked in any store other
18 than the Hopewell store?

19 A I worked part of a shift at Mercer Mall.

20 Q And what was the circumstance of you working part of the
21 shift at Mercer Mall?

22 A So I don't know the reasoning why someone was needed at
23 that store, but Misty had called the store and asked if anyone
24 could -- honestly, I don't even really know the phone call. I
25 just know someone needed go to the Mercer Mall, because

1 whatever reason. And she asked if there was any volunteers.

2 A couple of us volunteered pretty quickly, and I was the
3 one who was chosen. It was partway through my shift. And then
4 I just finished my shift over in Mercer Mall.

5 Q Okay. Was there any other occasion that you worked in any
6 other location?

7 A There was not.

8 Q Okay. And so that was voluntary on your part?

9 A It was.

10 Q Okay. Have you ever heard of anyone being forced to work
11 a shift in some other store outside of Hopewell?

12 A I have not.

13 Q Okay. Have you ever observed -- I'm sorry, let me step
14 back, and ask a foundational question. Do you know what the
15 term home store means?

16 A Yes.

17 Q What's it mean?

18 A So basically it's the main store. So like for me it would
19 be the Hopewell Starbucks. It would be the Hopewell Starbucks.

20 Q All right. So have you ever seen individuals other than
21 Baristas or Shift Supervisors whose home store is Hopewell
22 working in the Hopewell store?

23 A I'm sorry, could you repeat that question? I'm just --

24 Q Sure. Have you ever seen, excuse me, any individual from
25 outside the Hopewell home store, working in the Hopewell store?

1 A Yes.

2 Q How many times?

3 A I can't give a particular number. I think four or five.

4 Q And what -- do you know anything about the circumstances
5 of that?

6 A No particular circumstances I think of are there was one
7 time the Lawrence Township store was closed for a day, due to
8 some sort of maintenance reason. And people that were supposed
9 to come in that day volunteered to go over to another store.
10 And that store being the Hopewell store. So we had a couple
11 employees from the Lawrence location come to Hopewell, to cover
12 the rest of their shift --

13 Q And in that instance how many -- how long were those
14 individuals in the Hopewell store?

15 A Just for the day.

16 Q Okay. I'm sorry. So go ahead.

17 A So that was on instance where there was like multiple
18 Starbucks workers from other stores in. And then there was one
19 time too many Baristas were out on isolation in another stores,
20 so one off the Baristas, or -- I think her name was Keyana
21 (ph). I'm pretty sure she's a Store Manager now. Either way,
22 she was brought over to the Hopewell location for a day. And
23 then there's just been one or two times where I've seen like
24 someone from another location at this location.

25 Q And in those instances that you described, what was the

1 duration that someone was working in Hopewell that wasn't from
2 Hopewell?

3 A I've not seen them -- any of them work any longer than one
4 shift.

5 MR. GAUDIOSO: Okay. All right. Thank you. That's all
6 the questions I have for this witness.

7 HEARING OFFICER POWELL: Ms. Markey? Or do you need a
8 minute or two?

9 MS. MARKEY: Yeah. So if I could get just five minutes?

10 HEARING OFFICER POWELL: Okay. We'll give five minutes.
11 We'll come back -- why don't we come -- I'll give you seven.
12 Why don't we just come back three minutes -- five minutes after
13 3:00?

14 MS. MARKEY: Thank you.

15 HEARING OFFICER POWELL: Okay.

16 COURT REPORTER: We're off the record.

17 (Whereupon, a brief recess was taken)

18 COURT REPORTER: We're on the record.

19 HEARING OFFICER POWELL: Ms. Kenney, if you can come back?

20 THE WITNESS: I am back.

21 HEARING OFFICER POWELL: All right. Ms. Markey?

22 MS. MARKEY: I think just one question.

23 CROSS-EXAMINATION

24 BY MS. MARKEY:

25 Q Ms. Kenney, you had answered a question on direct about

1 how many times you've seen partners from other stores I believe
2 training in the Hopewell store, even though that was not their
3 home store, is that correct?

4 A Could you repeat that? I didn't quite understand it.

5 Q Sure. So on direct examination, towards the end of your
6 testimony, you talked about four or five times that you saw an
7 individual training in the Hopewell store, that that wasn't
8 their home store?

9 MR. GAUDIOSO: I'm sorry. I don't think I asked -- oh --

10 MS. MARKEY: And I'll ask, was that working in the store,
11 not training?

12 THE WITNESS: It was working.

13 MR. GAUDIOSO: If I said -- okay. I'm sorry, if I said
14 training, I apologize. I thought I had asked working.

15 BY MS. MARKEY:

16 Q So you've testified that in the times that you've been
17 working at the Hopewell store, which you started December 1st
18 correct?

19 A Correct.

20 Q Of 2021?

21 A Yes.

22 Q So in those roughly two months, there's been four or five
23 times that you've been working when other individuals that are
24 from stores, that Hopewell is not their home store, have been
25 working as well in Hopewell, is that correct?

1 A Correct.

2 Q And I believe you told us about the one incident or the
3 one time was when the Lawrence store closed. And you mentioned
4 another instance where there was a Store Manager in there. Did
5 you know the circumstances under the other three or four times
6 that you had partners working in the Hopewell store, where that
7 was not their home store?

8 A No, I didn't.

9 MS. MARKEY: No further questions.

10 HEARING OFFICER POWELL: Okay. I don't have anything for
11 this witness either. Mr. Gaudioso?

12 MR. GAUDIOSO: No redirect.

13 HEARING OFFICER POWELL: Okay. All right. All right, if
14 that's it, Ms. Kenney, thank you very, very much.

15 THE WITNESS: Thank you.

16 HEARING OFFICER POWELL: All right. There you go. All
17 right. Let's go off the record for a second.

18 (Whereupon, a brief recess was taken)

19 COURT REPORTER: We are on the record.

20 HEARING OFFICER POWELL: Okay. Mr. Gaudioso, do you have
21 anything further?

22 MR. GAUDIOSO: I do not.

23 HEARING OFFICER POWELL: All right. And so you rest?

24 MR. GAUDIOSO: Union rests.

25 HEARING OFFICER POWELL: Okay. Ms. Markey, do you wish to

1 put on a rebuttal witness?

2 MS. MARKEY: We do.

3 HEARING OFFICER POWELL: Okay. All right. Please call
4 your rebuttal witness.

5 MS. MARKEY: The Employer calls Misty Knight. Oh, and I'm
6 sorry. I need to get her set up into a witness room. I'm
7 sorry. I wasn't sure that we'd go right into it. So I do need
8 10 minutes to get her set up.

9 HEARING OFFICER POWELL: Okay. All right. Off the
10 record. We'll come back in to.

11 COURT REPORTER: We're off the record.

12 (Whereupon, a brief recess was taken)

13 (Whereupon, there was a brief pause off the record.)

14 HEARING OFFICER POWELL: On the record. Ms. Markey?

15 MS. MARKEY: The Employer calls Misty Knight.

16 HEARING OFFICER POWELL: Okay, Ms. Knight --

17 MS. KNIGHT: Yes.

18 HEARING OFFICER POWELL: Okay, could you raise your right
19 hand please?

20 Whereupon,

21 MISTY KNIGHT,

22 was called as a witness by and on behalf of the Employer and,
23 having been first duly sworn, was examined and testified on her
24 oath, via Zoom, as follows:

25 HEARING OFFICER POWELL: All right. Could you state your

1 last name, please?

2 THE WITNESS: Misty Knight, K-n-i-g-h-t.

3 HEARING OFFICER POWELL: All right. And Ms. Knight,
4 where are you right now?

5 THE WITNESS: I'm in an office in Newark.

6 HEARING OFFICER POWELL: All right, are you by yourself?

7 THE WITNESS: I am.

8 HEARING OFFICER POWELL: All right. Is the door open or
9 closed?

10 THE WITNESS: The door is closed.

11 HEARING OFFICER POWELL: Do you have your cell phone or
12 anything with you?

13 THE WITNESS: I have nothing on, no.

14 HEARING OFFICER POWELL: Any notes?

15 THE WITNESS: No.

16 HEARING OFFICER POWELL: Okay. Mr. Gaudioso, do you have
17 any limited questions you'd like to ask Ms. Knight?

18 MR. GAUDIOSO: I do not.

19 HEARING OFFICER POWELL: All right, Ms. Markey, you may
20 proceed.

21 MS. MARKEY: Thank you.

22 DIRECT EXAMINATION

23 BY MS. MARKEY:

24 Q. Is it okay if I call you Misty?

25 A. Yes.

1 Q. Misty, are you currently employed?

2 A. I am.

3 Q. By whom?

4 A. Starbucks Coffee Company.

5 Q. And how long have you worked at Starbucks?

6 A. Almost three years.

7 Q. What is your current position?

8 A. Store manager.

9 Q. How long have you held that position?

10 A. Since October 21st, of '19, 2019.

11 Q. And what store are you the manager of?

12 A. Hopewell.

13 Q. Have you been the manager of the Hopewell store since
14 October of 2019?

15 A. Yes.

16 Q. Do you hold any other titles?

17 A. I am a store manager trainer.

18 Q. What does that mean?

19 A. That means I will have recently promoted or hired
20 externally assistant store managers that are training to be
21 store managers that I train.

22 Q. How often do you train assistant store managers?

23 A. Depending on their status it will either be a four week
24 duration of eight week duration. So far there's been maybe
25 once a month in the last three to four months.

1 Q. And how long do you have the title store manager trainer?

2 A. I'd have to say maybe June of last year, I'm sorry.

3 Q. I was cutting you off to ask you what year. So you've
4 been a store manager trainer since June of 2021?

5 A. Yes, approximately.

6 Q. And what did you have to go through or did you have to do
7 anything to become a store manager trainer?

8 A. There was just more conversation around being a store
9 manager trainer and more what I -- what I should be doing in my
10 store to become a store manager trainer for the District.

11 Q. And which District are you a store manager trainer for?

12 A. 761.

13 Q. Do you know who made the decision for you to become a
14 store manager trainer?

15 A. Scott.

16 Q. And is that Scott Thibideau, DM?

17 A. Yes.

18 Q. Are there any other store manager trainers that you're
19 aware of in District 761?

20 A. Yes.

21 Q. Who else?

22 A. Carol Ann, the store manager of Bordentown and Landon and
23 I can't pronounce his last name. It starts with an A. He is
24 the store manager at our Hillsborough location.

25 Q. Did you have any position with Starbucks prior to store

1 manager?

2 A. I came in -- I was hired as an assistant store manager.

3 Q. And how long did you hold the title of assistant store
4 manager?

5 A. I was hired March 11th of 2019 so until October 21st of
6 2019.

7 Q. And where did you do your training as an assistant store
8 manager?

9 A. I trained at our Robbinsville location.

10 Q. Is that location -- what District is that location in?

11 A. That is in District 761.

12 Q. Did you ever work with the store manager at the
13 Robbinsville location?

14 A. No.

15 Q. Have you worked as a store manager anywhere other than the
16 Hopewell store?

17 A. Not with that title, no.

18 Q. Have you ever held any other titles or responsibilities
19 besides the store manager and the store manager trainer title?

20 A. Yes. So as an assistant manager, after my training was
21 complete in Robbinsville, I was put into the Hillsborough
22 location until about August of '21. Initially there was a
23 store opportunity for me so I was going -- I ended up
24 transferring to our Market Fair location in Princeton Market
25 Fair.

1 That opportunity didn't happen because the new store that
2 was going to open, that the original store manager was in was
3 delayed, so we essentially managed together at that point in
4 time which I was so envious as to the assistant manager title
5 until the Hopewell location became available.

6 Q. What do you mean by managed together?

7 A. I mean we shared the responsibility of running his store.

8 Q. And that was the Princeton Market Fair store?

9 A. Yes.

10 Q. How long did you share responsibilities for running the
11 Princeton Market Fair store?

12 A. From August of '21 till October of '21.

13 Q. And is there -- what District was the Princeton Market
14 Fair store in?

15 A. 761.

16 Q. What District is the Hillsborough location in?

17 A. 761.

18 Q. At the Hopewell store are you responsible for hiring?

19 A. Yes.

20 Q. Are you the only one involved in hiring decisions?

21 A. Ultimately, yes.

22 Q. Do you involve anyone else in those decisions?

23 A. I do. It depends on the situation, but I will typically
24 reference Scott and/or others for managers.

25 Q. In what kinds of situations will you involve Scott?

1 A. There can be a situation where someone might not fit the
2 needs of my store availability, but it could fit the needs of
3 another store or in regard to a promotion.

4 Q. Do you make the promotion decisions for your store?

5 A. Not solely.

6 Q. Who else is involved in making those decisions?

7 A. The store managers that do the interview, that do the
8 interview process and Scott.

9 Q. Have you ever made a promotion decision on your own?

10 A. No.

11 Q. Have you always consulted with Scott before making a
12 promotion decision?

13 A. Yes.

14 Q. Who are you responsible for? What positions do you make
15 promotion decisions for?

16 A. I make the decision to take a barista to a barista
17 trainer. That's typically still a discussion and the promotion
18 is based on if the partner passed their interview and then it
19 is discussed with Scott if we're the same.

20 Q. And who discusses that with Scott with regard to the
21 barista trainer?

22 A. Myself.

23 Q. Anyone else?

24 A. Not typically.

25 Q. And with you have the promotion -- are there any other

1 positions that you're involved with the promotions to that
2 position?

3 A. No.

4 Q. And when you have - did you list any other positions other
5 than the barista trainer -- I'm sorry -- as far as promotions
6 that you're involved with?

7 A. Just shift supervisor and barista trainer.

8 Q. And with regard to the promotion to shift supervisor, how
9 many of those decisions have you made during the time that
10 you've been a store manager?

11 A. Four.

12 Q. And in those four times did you talk about that decision
13 with Scott each time?

14 A. Yes.

15 Q. And what did you discuss with Scott with regard to those
16 promotions to shift supervisor positions?

17 A. Sure. We would discuss how -- how they did in the
18 interview process; if they passed their interview, who we
19 thought would be the best candidate based on their interview
20 process; and how it met the needs of the store for our
21 decision; and who would -- who we would promote.

22 Q. And did you do that before informing the individual
23 whether they've gotten the promotion?

24 A. Yes.

25 Q. Has all four of the individuals that you interviewed for a

1 promotion been promoted?

2 A. So the four are the ones that have been promoted. I've
3 been involved in more interviews and decision making around the
4 yes or no of a shift supervisor coming on.

5 Q. Has there ever been a shift supervisor that you wanted to
6 promote that Scott disagreed with what you wanted to do?

7 A. No.

8 Q. Have there been shift supervisors who were up for
9 promotion that you didn't want to promote?

10 A. I'm not sure how the --

11 Q. I'll lay the foundation for that a little bit more.
12 That's my fault. Do shift supervisors or individuals that want
13 to become a shift supervisor apply for that position?

14 A. Yes.

15 Q. Does everyone get an interview?

16 A. Yes.

17 Q. Have there been individuals who you've interviewed for the
18 shift manager position that you have not wanted to promote into
19 that position?

20 A. Based on the interview, yes.

21 Q. And did you discuss that -- did you discuss that with
22 Scott?

23 A. Yes.

24 Q. And were those individuals who you didn't want to promote
25 after that interview not promoted?

1 A. I don't always interview for my own location so I am not
2 necessarily sure outside if they have been promoted. Sorry,
3 what I'm referencing is something that's still currently
4 active. There's an active interview process happening so
5 there's decisions still being made, but I'm unaware at this
6 particular moment.

7 Q. Okay. So when you are interviewing, you interview for
8 promotions for locations outside of your store, is that
9 correct?

10 A. Yes.

11 Q. So when you're referring to the fact that you're not
12 always sure what happens, if there's someone you're
13 interviewing for a shift supervisor promotion, if that
14 individual's not in your store you may not know what happens
15 after you interview the, is that what you were saying?

16 A. Correct.

17 Q. Are there any other interviews you do that are not for
18 your own location?

19 A. Yes.

20 Q. Can you explain for us what those are?

21 A. Sure. Barista's interviews, initial startup hire.

22 Q. How do you end up interviewing baristas if it's not -- if
23 they're not working or going to be working at the Hopewell
24 store?

25 A. Sure. So we have a cadence that we interview regularly.

1 I also am a store manager trainer so we interview regularly for
2 the training of the assistant managers. There are a variety of
3 times where I am fully staffed and will not have a need for
4 somebody new or an ability that doesn't fit that we've
5 interviewed, that has passed the interview and they would be a
6 good fit at another location.

7 Q. How often does that happen?

8 A. Frequently.

9 Q. How frequently?

10 A. In the last -- in the last month I've had two or three
11 partners for other locations.

12 Q. How about before the last month?

13 A. Maybe once or twice a month. It really varies based on
14 the availability of the applicant that comes with.

15 Q. Has the Hopewell store been -- how has the staffing been
16 at the Hopewell store since you've been the store manager?

17 A. For the most part it's fairly staffed regularly.

18 Q. Have you ever posted for positions on Indeed?

19 A. Yes.

20 Q. Have you made that decision to post four open positions on
21 Indeed?

22 A. No.

23 Q. Who made that decision?

24 A. Scott.

25 Q. Were you able to make that decision yourself?

1 A. No.

2 Q. Why not? Do you know why not?

3 A. It's a -- there's a financial piece associated with it and
4 it's decided by Scott also based on the needs of the market so
5 they may appear at other locations so we can cross reference
6 the whole market.

7 Q. So when you posted on Indeed did you have an understanding
8 as to whether individuals would only be able to apply to the
9 Hopewell store?

10 A. (No response.)

11 Q. I'll ask a better question. When you posted on Indeed
12 what did you post?

13 A. I posted a requisition for Huntington area for a barista.

14 Q. Did you interview anybody that you understood was
15 responding to that post?

16 A. Yes.

17 Q. Who did you interview?

18 A. I've interviewed quite a few people from Indeed, but
19 people that are now partners includes Hailey Kinny, Kelly
20 O'Neill, potentially someone else, I can't recall at the
21 moment.

22 Q. Have you interviewed individuals who applied for the
23 acquisition for another location and ended up working in a
24 different location than what they applied for?

25 A. As in they applied at my location and ended up going to

1 another location?

2 Q. I'm trying to ask it broader than that because then you've
3 told us you interview for other locations.

4 A. Sure. I have interviewed people that have specifically
5 applied to my location with the clarification that they may be
6 hired into another location and I've also participated in like
7 District-wide hiring such as job fairs.

8 Q. How many District-wide hiring at job fairs have you
9 participated in?

10 A. One.

11 Q. And when was that?

12 A. I -- it was early. I'm sorry, I'm not sure, like early in
13 the duration of my career, not early in the morning.

14 Q. I understand, so early in the time period that you were a
15 store manager?

16 A. Yes.

17 Q. And to the extent you say that you've interviewed people
18 who applied to your location with the clarification that they
19 could be hired for another location, when -- was that
20 clarification explained to the applicant?

21 A. Yes.

22 Q. And when was it explained to the applicant?

23 A. Through the interview process, especially when we discuss
24 availability and the needs of the -- just the needs in general
25 for the District, it will be shared fact. If their

1 availability doesn't match that doesn't mean we wouldn't bring
2 them on, we would find them another location so they would
3 still be a part of Starbucks.

4 Q. Do you do the scheduling for the Hopewell store?

5 A. Yes.

6 Q. What do you take into account, if anything, when doing the
7 scheduling?

8 A. Sure. Typically labor allotted, partner availability,
9 preferred availability, and the amount of hours that partners
10 are either looking for that I can distribute evenly.

11 Q. Do you discuss any of those things with anyone else when
12 doing the schedule?

13 A. Yes.

14 Q. Who do you have those discussions with?

15 A. Scott, sometimes partners.

16 Q. What do you discuss with Scott?

17 A. We will discuss hours in general so a lot of labor, the
18 needs of the business, if there is a scheduling need or if
19 there's -- essentially that. That would be about what we would
20 discuss around that.

21 Q. And when you say that you discuss allotted labor with
22 Scott, can you tell us what that is?

23 A. Yeah, so we're given a budget that we are to schedule
24 within. Sometimes that budget is more in our favor than others
25 and so we'll discuss if, you know, just hours in general, how

1 we can use them if we're able to spend additionally and how it
2 benefits or how we would essentially make up for that with
3 sales and anything else.

4 Q. How often do you have that discussion regarding allotted
5 labor that you just described with Scott?

6 A. Weekly.

7 Q. What do you discuss regarding the needs of the business
8 with Scott?

9 A. We would discuss any hiring that we have needs with; any -
10 - any upcoming changes or events; any modification of
11 operating hours; really every -- it could be a little bit of
12 everything. There's a variety, like as far as the needs of the
13 business that income which is a large amount of things.

14 Q. And how often do you discuss the needs of the business
15 with regard to scheduling of Scott?

16 A. With regards to scheduling, weekly.

17 Q. And when you say scheduling need, can you describe for us
18 what that involves in discussing the scheduling needs with
19 Scott?

20 A. Yeah. Sometimes it's around additional labor; sometimes
21 it's around having to modify if we're unable to -- if we're not
22 staffed appropriately or accordingly so we can modify hours.
23 And also just for like hiring needs in general. If we find
24 we're having a difficult time writing the schedule especially,
25 and how we can get support in that.

1 Q. And what kind of support when you get or have you got -- I
2 guess let me start with what kind of support can you get if
3 you're having a difficult time with the schedule?

4 A. So sometimes it's an allowance of ours. It is sometimes
5 an allowance of overtime, whether that's from a partner within
6 my building or outside to support the needs of the District.

7 Sorry, I lost my train of thought. Can you --

8 Q. No, that's okay, it's the end of the day.

9 A. Okay.

10 Q. I'll ask you a question on those and then you can go back.

11 A. Okay.

12 A. I'd asked you what kind of support is available if you're
13 having, as you had said, a difficult time with the schedule and
14 you said allow it to overtime from within Hopewell or outside
15 of Hopewell and allow it to hours. Is there anything else
16 you're aware of that could be support provided if you're having
17 a difficult time with the schedule?

18 A. Yeah, an allowance of modified hours. We've had store
19 closure. Scott's directly reached out across the District to
20 try to find support of partners that could come and assist.

21 Q. How often has he done that?

22 A. As often as needed, but as far as the like reaching out
23 across the District is that what you're referencing?

24 Q. I'll back up even further because you had said --

25 A. Okay.

1 Q. -- that the store was well staffed. How often or has
2 there been a need to reach out across the District to get
3 partners to help with staffing in your store?

4 A. Yeah, it varies as to what is around, but if there's like
5 a call out or something where a shift supervisor calls out and
6 that's a key role in order to have the store maintain
7 operation, he'll try to reach out and find another key holder
8 that could assist or we would end up having to close early that
9 day., depending on what happens.

10 Q. Can you make the decision to close early for a day?

11 A. No.

12 Q. Who makes that decision?

13 A. Scott.

14 Q. You mentioned that another way that you can deal with the
15 scheduling difficulties is modified hours, is that correct?

16 A. Yes.

17 Q. Can you make the decision to modify hours?

18 A. No.

19 Q. Who can make that decision?

20 A. Scott.

21 Q. Can you make the decision to close the store?

22 A. No.

23 Q. Who can make that decision?

24 A. Scott.

25 MR. GAUDIOSO: I'm going to object at this point. My

1 understanding was this was rebuttal and this just sounds like
2 the same testimony that Mr. Thibideau gave, but I don't see it
3 as being rebuttal to anything that any of the Union's witnesses
4 testified to.

5 HEARING OFFICER POWELL: So, you know, to the extent that
6 some of the witnesses gave answers that were not in line or
7 contradictory to what Mr. Thibideau said about this, I guess
8 since this witness is testifying about -- about that, to rebut
9 that, --

10 MR. GAUDIOSO: I'm sorry, I still don't know what she's
11 rebutting when this never came up, this line of questioning
12 never came up in my direct of the Union's witnesses. This just
13 sounds like more of basically more of her case-in-chief. This
14 isn't rebuttal.

15 MS. MARKEY: If I may address that, Mr. Powell?

16 HEARING OFFICER POWELL: Yes, Ms. Markey, go ahead.

17 MS. MARKEY: We had extensive testimony from the Union
18 witnesses, particularly Sarah with regard to scheduling and
19 extensive testimony was permitted about statements made by Ms.
20 Knight with regard to what she allegedly does and does not do
21 with scheduling. This all goes back to scheduling.

22 This line of questioning started with scheduling, what she
23 does with scheduling, what she considers and what support is
24 necessary in the consideration of scheduling, so it's high
25 relevant to the rebuttal. It is rebuttal to that testimony

1 raised by the Union witnesses.

2 MR. GAUDIOSO: It is actually not because Ms. Markey
3 hasn't asked her a thing about Sarah's testimony specifically
4 on the comments alleged to have been made by Ms. Knight. That
5 would be rebuttal.

6 HEARING OFFICER POWELL: I think she's going to the
7 general, to the general thought.

8 MR. GAUDIOSO: Okay.

9 HEARING OFFICER POWELL: I'm going to allow it and let
10 the reader of the record make the final determination as to the
11 weight, all right?

12 MR. GAUDIOSO: Okay.

13 HEARING OFFICER POWELL: Go ahead, Ms. Markey.

14 MS. MARKEY: And if you give me just a moment, I don't
15 believe I have many, if any, additional questions.

16 HEARING OFFICER POWELL: Okay.

17 MS. MARKEY: No further questions from this witness.

18 HEARING OFFICER POWELL: Okay, all right. Mr. Gaudioso,
19 do you need a minute?

20 MR. GAUDIOSO: I'm good to go.

21 HEARING OFFICER POWELL: Okay. Go ahead, Mr. Gaudioso.

22 CROSS EXAMINATION

23 BY MR. GAUDIOSO:

24 Q. Good afternoon, Ms. Knight, my name is Dave Gaudioso. I'm
25 counsel for Workers United. A few follow up questions. When

1 you were testifying about responsibilities of hiring, you said
2 you and I wrote this in quotes, you reference Scott. What do
3 you mean by you reference Scott for hiring decisions?

4 A. I would need to know what my answer was to be able to re-
5 answer that. I'm not sure to what context I shared that.

6 Q. All right, let me ask you a different question. Do you
7 recall hiring Haley Kinney?

8 A. Yes.

9 Q. At the conclusion of your -- you interviewed Ms. Kinney,
10 correct?

11 A. Yes.

12 Q. At the conclusion of your interview did you hire her?

13 A. I did.

14 Q. You made the decision to hire her?

15 A. Yes.

16 Q. And you offered her a position?

17 A. Yes, it's all contingent on background check, but yes.

18 Q. Okay, sure, understood it's contingent on the background
19 check, so that's different than being contingent on Scott
20 saying you can -- that Hailey Kinney is a good fit for your
21 store, right? He was not involved in the interview.

22 A. He was not involved in the interview.

23 Q. Okay. So you made the decision to hire Ms. Kinney
24 independent of him, correct?

25 A. Yes.

1 Q. And is that generally what happens when you hire new
2 partners in your store?

3 A. Generally, yes.

4 Q. And when you talked about promotion decisions, then I
5 looked at them, you said you consulted with Scott.

6 A. Yes.

7 Q. So do you make a determination who you would like to
8 promote before -- before making any overture to that
9 individual?

10 A. As far as who I would like?

11 Q. Yes. Let me be a little clearer.

12 A. Okay.

13 Q. You have a barista you would like to move up to shift
14 supervisor, okay. Do you make that determination that that
15 person would be a good shift supervisor on your own?

16 A. I'm a determining factor, my opinion, yes. The decision,
17 however, is not solely mine.

18 Q. When you say you're a determining factor, what's that
19 mean?

20 A. It means that other store managers will typically do the
21 interview for shift supervisors. They will then share the
22 feedback of those interviews and whether or not they passed
23 them and then there's a discussion as to who we would bring on
24 based on the interview process and not --

25 Q. And is that to eliminate -- I'm sorry, I didn't want --

1 A. Go ahead, yeah.

2 Q. Is that to eliminate any bias that you may have with
3 respect to someone within your store?

4 A. That's part of it, it's just to create a fair and
5 consistent opportunity for anyone that applies.

6 Q. Okay. Is Scott ever involved in those interviews?

7 A. Not that I'm aware of.

8 Q. Now, you mentioned that you have interviewed individuals
9 that have subsequently gone to other stores, didn't get a --

10 A. Yes.

11 Q. In those instances that those individuals went to other
12 stores is that because you didn't have a place for them? I'm
13 sorry, the Hopewell store didn't have an opening for them?

14 A. That is one instance. Another instance would be that
15 there is a need for another store and so in that case we will
16 interview, as in store managers within the District will
17 interview to hire for that store, so it could be a store in
18 need, it could be a new store opening.

19 Q. And that's assuming, correct, that the individual who is
20 being interviewed wishes to go to that other store, right?

21 A. No.

22 Q. No? You can say, you were hired here, you have to go over
23 there?

24 A. I would not say it like that, but I can say that we're
25 hiring for this location or I currently don't have a need based

1 on the availability that you have, but this location does.

2 Q. Okay, so if they want to work, at that particular point,
3 they've got to make a decision if they want to go over to that
4 store, right?

5 A. Correct?

6 Q. Or they could potentially wait and see if there's an
7 opening at some point in your store, correct?

8 A. They could.

9 Q. Okay. Now, when -- after you've interviewed that
10 individual and sent them on their way to another store, are you
11 hiring for the other store or does the store manager in the
12 other store have to interview that individual as well?

13 A. I would follow through the hiring process. They would not
14 need to interview them additionally.

15 Q. So you can hire for another store?

16 A. Yes.

17 Q. Has somebody ever been hired by a different store manager
18 and placed in your store? Let me qualify that, while you were
19 store manager?

20 A. Right. I'm referencing my duration. No, but for lack of
21 need, not for lack of not able to.

22 Q. I'm sorry, I don't understand what that means.

23 A. So if someone else is going to hire into my location
24 without me also doing like an interview or meeting this
25 partner, it would be because I had a need for hiring beyond

1 what I had available to myself.

2 Q. So if someone initially interviewed in another store and
3 they came over to your store would you interview them on your
4 own?

5 A. Not if they were already hired, no.

6 Q. Before they were hired?

7 A. If they had been interviewed elsewhere, but potentially
8 going to be a new hire at my location would I interview them
9 again?

10 Q. Um-hum.

11 A. No.

12 Q. You would not interview them again?

13 A. Not specifically, no.

14 Q. How many times have you hired someone, directed them to
15 another store and then they in turn worked at the other store
16 without being interviewed by the store manager in that store?

17 A. I mean they would have to share that they've been
18 interviewed, but that's not typically the process so from what
19 I have hired and I can speak to like most recent is one to two
20 partners in the last month.

21 Q. That you have hired for another store?

22 A. Yes.

23 Q. Okay. And how many -- what's your experience -- how many
24 times has it happened that someone has -- another store manager
25 has interviewed an individual and then sent them to your store

1 and you had an opening, you had to accept them because that's
2 apparently what's your day.

3 A. When they're hired they become a partner and they're
4 treated as such and so if the availability's there and they are
5 not in good standing, if they are in good standing then there
6 is no need to vet somebody to come into another location.

7 HEARING OFFICER POWELL: Mr. Gaudioso, so if I may just
8 for a second because just for clarification because I'm a
9 little confused.

10 So you say there has been -- there has been instances
11 where a manager at another store has hired someone brand new,
12 just said you're hired, but you're not hired for Hopewell?

13 THE WITNESS: Not specific to my location, but yes.

14 HEARING OFFICER POWELL: I'm sorry?

15 THE WITNESS: Not specific to my location, but yes.

16 HEARING OFFICER POWELL: So is there a different -- what
17 I'm trying to get at is the person was interviewed at one
18 store, he may have been hired to come into that store, but then
19 for some reason got sent over to another store. Is that what's
20 going on or are they literally being interviewed for another
21 store -- they're being interviewed at Store A for a position at
22 Store B?

23 THE WITNESS: Yes, that is correct.

24 HEARING OFFICER POWELL: Which one?

25 THE WITNESS: Being interviewed at Store A for a position

1 at Store B.

2 HEARING OFFICER POWELL: Okay. And then Store B has been
3 in existence?

4 THE WITNESS: Yes.

5 HEARING OFFICER POWELL: Okay. Mr. Gaudioso, go ahead.

6 MR. GAUDIOSO: Okay, so let me just follow up.

7 BY MR. GAUDIOSO:

8 Q. So -- and I'm not sure I understood your answer so let me
9 rephrase the question. So has there been -- can you recall
10 specific instances where someone was interviewed by a store
11 manager in another store and then told that they are working in
12 your store?

13 A. Not specif -- not into my location, no.

14 Q. Okay. Now, you indicated that you speak to Scott weekly
15 with regard to scheduling issues?

16 A. Yes.

17 Q. Correct me if I'm wrong, your schedules are set three
18 weeks in advance, right?

19 A. Yes.

20 Q. Okay. So if you're talking to Scott weekly about
21 something that's scheduled in a three week block, is --
22 subsequent to your -- well, let me strike that.

23 How is Scott affecting or how is Scott intervening in your
24 work schedule that's set for a three week period on a weekly
25 basis?

1 MS. MARKEY: I'd object to the question. There's a lack
2 of foundation for Scott intervening in the schedule or it being
3 set at the time that they're discussing it. I think that that
4 needs to be rephrased and or a foundation for that.

5 MR. GAUDIOSO: I'm sorry, I thought Ms. Knight's
6 testimony was that with regard to scheduling she discusses on a
7 weekly basis labor allotment, partner availability, preferred -
8 - you know, these types of -- scheduling types of matters and
9 I'm confused. This is done apparently on a weekly basis when
10 the schedules are set on a three week basis.

11 MS. MARKEY: That sounds like a question different from
12 what you asked originally so I withdraw the objection.

13 MR. GAUDIOSO: Okay. So can the witness answer that?

14 MS. MARKEY: If he understands it, I'm fine with that.

15 THE WITNESS: We still write a schedule every week that
16 we're responsible for. So even they're done three weeks in
17 advance, we are still writing a schedule for that third week
18 out that we post every week. So if something needs to be
19 different than what is stated as far as hours or anything like
20 that, those are discussions that need to be done prior to the
21 posting of the schedule.

22 BY MR. GAUDIOSO:

23 Q. But if a schedule is set to three weeks and you've got
24 partners' names on that schedule and they planned around their
25 schedule for three weeks, are you telling me now that that

1 actually changes on a week-by-week basis?

2 A. No, what I'm saying is that every week we still write a
3 schedule so there are schedules that are done three weeks in
4 advance, but we still post the schedule every single week so
5 they continue to have a schedule three weeks in advance. I
6 don't write three schedules in one week, I write one schedule
7 every week.

8 HEARING OFFICER POWELL: Oh, I see what you're saying, I
9 believe. And let me see, Mr. Gaudisos. I think what she's
10 saying is she writes a schedule every week for three weeks in
11 advance.

12 THE WITNESS: Yes.

13 HEARING OFFICER POWELL: So like ever week -- week one
14 this is good for the next three weeks. Week two, this is for
15 the next three weeks so it keeps getting --

16 THE WITNESS: It's for the same three weeks so if we are
17 -- we posted or we will be posting the Valentine's Day schedule
18 on Monday. So these three schedules that are already done are
19 typically discussed unless there's a particular situation, but
20 the continuing schedule -- so like next Thursday I'll be
21 writing the schedule for the week after the 14th. And then
22 after that, a week after that so it's a continual three week
23 duration for the partners.

24 HEARING OFFICER POWELL: Okay, I get it. I think I
25 believe what you're saying so all right. So let's say there

1 are just, for clarification so I understand. Let's say there's
2 four weeks in February. At the end of January you put up a
3 schedule for the first three weeks in February. Then in the
4 first week of February, you put up a schedule for Week 2, Week
5 3 and Week 4 of February, is that --

6 THE WITNESS: No.

7 HEARING OFFICER POWELL: Am I confused? Okay, I'm glad
8 because I'm confused by what you mean so I'm --

9 THE WITNESS: Sure.

10 HEARING OFFICER POWELL: -- trying to clarify for the
11 reader of the record and who's going to write the decision. Go
12 ahead.

13 THE WITNESS: Okay. So there will always be three weeks'
14 worth of schedules posted, but we write them a week at a time,
15 so we are always three weeks out as far as our planning and
16 prioritizing to ensure that a partner will have their schedule
17 for three weeks. So the week -- I don't have a calendar -- the
18 week we're currently in right now, you would see the week we're
19 in, you would see the week after and you would see the
20 following week.

21 On Monday I will post an additional schedule for the 14th
22 and remove the schedule of the week we're currently in. So
23 there's a rotating three schedules always. However, they're
24 only written one at a time.

25 HEARING OFFICER POWELL: Okay, all right, so it's

1 rolling.

2 THE WITNESS: Yes.

3 HEARING OFFICER POWELL: It's always -- there's always a
4 one week roll basically.

5 THE WITNESS: Yes, yes.

6 HEARING OFFICER POWELL: Okay. You're always adding a
7 new week towards the end.

8 THE WITNESS: Correct.

9 HEARING OFFICER POWELL: All right.

10 BY MR. GAUDIOSO:

11 Q. But it's still set for three weeks?

12 A. Yes.

13 Q. Okay. And is Scott assisting you in putting pen to paper
14 with names of who's going to fill those -- that schedule that
15 you post? And actually let me -- you post this in the back --

16 A. Yes, we do.

17 Q. -- near the refrigerator or something?

18 A. Um-hum.

19 Q. Okay. And it's posted for a three week period?

20 A. Yes.

21 Q. Okay. So is Scott helping you put names on that piece of
22 paper?

23 A. I don't put names on the piece of paper, I just put the
24 times that they're working.

25 Q. I'm sorry, can you repeat that or -- okay, does the paper

1 already have names on them?

2 A. Are you talking -- referring to the posted schedule?

3 Q. Yes.

4 A. Or are you talking about creating a schedule?

5 Q. Let's start with the posted schedule.

6 A. Okay.

7 Q. So you have a posted schedule.

8 A. Yes.

9 Q. Are there names on it?

10 A. There are.

11 Q. Who puts the names on it?

12 A. The program that does our scheduling.

13 Q. Okay. Who puts the hours next to the names?

14 A. As far as their shifts?

15 Q. Yes.

16 A. I decide the shifts.

17 Q. Do you call up Scott before you decide the shifts and say,
18 Scott, help me out here with these shifts?

19 A. No.

20 Q. And okay, now I'm sorry, so there's the created schedule?
21 Did I hear that right, I may have mistaken --

22 A. Posted?

23 Q. Posted, I'm sorry.

24 A. Posted schedule.

25 Q. Posted and what was the other one?

1 A. The -- like the making of the schedule. I think that's
2 what you were discussing.

3 Q. I think we just discussed the making of it.

4 A. Okay.

5 Q. So now you've discussed this weekly meeting that you have
6 with Scott, right, you discussed it, you have -- where you're
7 discussing scheduling issues. And are you discussing other
8 things besides scheduling?

9 A. Sometimes.

10 Q. Is this just a meeting between you and Scott or is this a
11 meeting that you're involved with Scott and other store
12 managers?

13 A. It can be both.

14 Q. Okay. So my understanding from Scott's testimony
15 yesterday is that he has a weekly meeting with all of the store
16 managers.

17 A. Yes.

18 Q. Okay. Do you have a regularly scheduled meeting, just you
19 and Scott, in addition to that meeting?

20 A. It is not regularly scheduled.

21 Q. How often is it scheduled?

22 A. So there can be discussion weekly. There is also a
23 calendar invite for a particular time if we have something to
24 discuss regarding the schedule every Friday.

25 Q. Well, how often would you say you have a meeting, a one-

1 on-one meeting, you yourself with Scott, in addition to that
2 weekly meeting that you have with all the store managers that
3 Scott testified to yesterday?

4 A. It's not a scheduled meeting, it's typically a phone call
5 to discuss the schedule. We don't put it necessarily on the
6 calendar or do like a Zoom, it's a discussion around the
7 schedule or the needs on a weekly basis. That's why I said
8 weekly and not on a specific day.

9 Q. Okay, so let me go back to my original question. Are you
10 saying that you have a weekly phone call, you and Scott, in
11 addition to that weekly meeting that he described yesterday to
12 discuss scheduling?

13 A. Typically, yes.

14 Q. And is there a specified time for that phone call?

15 A. No.

16 Q. Is there a set day for that phone call?

17 A. No.

18 Q. So if you're -- if you're always trying to set a schedule
19 for one week beyond the three weeks and you need to talk to
20 Scott about scheduling, don't you have to have that
21 conversation with Scott, that phone conversation that you just
22 described, prior to making that one week out schedule?

23 A. No, we are able to adjust a schedule until Monday that we
24 would post it.

25 Q. Who's we?

1 A. Store managers.

2 Q. You can adjust it on your own?

3 A. Correct, because it's not posted yet.

4 Q. Okay. This phone call that you have with Scott anything
5 else get discussed?

6 A. Sometimes.

7 Q. Like what?

8 A. Anything involving the store, anything involving partners,
9 it can be a variety of things he's available for. That's what
10 he's available for, to support us in our needs for the
11 business.

12 Q. Okay. So it's anything you would bring up?

13 A. And vice versa.

14 Q. Okay. So you say vice versa, something in addition to
15 whatever he's bringing up in that weekly meeting with all the
16 store managers?

17 A. Could be.

18 Q. Okay. You were in the chat when Sarah testified, correct?

19 A. Yes.

20 Q. And you heard her testify with regard to two brief
21 conversations she had with you regarding scheduling, right?

22 A. Yes.

23 Q. Do you have any issue with what she testified to?

24 MS. MARKEY: I'm going to object just so did you have any
25 issue. If you want whether or not -

1 BY MR. GAUDIOSO:

2 Q. Do you disagree, with what Sarah testified to?

3 A. I can't disagree with her account of what happened or she
4 thinks could happen. As far as she was asked questions around
5 what else or who else may talking or spoken to or things like
6 that, I can't attest to no more than what she says she knows so
7 I'm not sure how to answer that.

8 Q. Well, did it happen or didn't it?

9 A. That's not what I'm saying. You asked if I agreed or
10 disagreed with her testimony. There's more than just those two
11 phrases that were stated.

12 Q. Okay. Were those phrases said by you?

13 A. Probably.

14 Q. All right.

15 MR. GAUDIOSO: Give me one moment, please.

16 HEARING OFFICER POWELL: Sure. Do you want to go off the
17 record or --

18 MR. GAUDIOSO: Ummm.

19 HEARING OFFICER POWELL: All right, let's go off the
20 record.

21 MR. GAUDIOSO: Yeah, maybe just for one minute.

22 COURT REPORTER: We're off the record.

23 (Pause off the record from 4:33 p.m. to 4:35 p.m.)

24 HEARING OFFICER POWELL: Back on the record.

25 COURT REPORTER: We're on the record.

1 BY MR. GAUDIOSO:

2 Q. Ms. Knight, is the store manager ultimately in charge of
3 all store operations?

4 A. Yes.

5 Q. Does the store manager directly work with the assistant
6 store manager, shift managers, shift supervisors and baristas?

7 A. Yes.

8 Q. Is the store manager responsible for personnel decisions?

9 A. Yes.

10 Q. Is the store manager responsible for scheduling?

11 A. Yes.

12 Q. Is the store manager responsible for payroll and fiscal
13 decisions?

14 A. Yes.

15 Q. Okay. So when I broadly say is the store manager -- if I
16 specified is the store manager in Hopewell, you, and I asked
17 all those questions would your answers still be in the
18 affirmative?

19 A. Yes.

20 MR. GAUDIOSO: Okay, thank you.

21 HEARING OFFICER POWELL: All right. I have some
22 questions. Do you manage another -- do you ever manage another
23 store or are you just responsible for Hopewell?

24 THE WITNESS: I have managed an additional store.

25 HEARING OFFICER POWELL: At the same time as Hopewell?

1 THE WITNESS: Yes.

2 HEARING OFFICER POWELL: Okay, what store was that?

3 THE WITNESS: Mercer Mall.

4 HEARING OFFICER POWELL: And why was that?

5 THE WITNESS: The store manager that was currently there
6 received a different opportunity and we needed a store manager
7 to assist in that store as well.

8 HEARING OFFICER POWELL: Okay. And that was the only --
9 that was the only -- so basically that store manager, there was
10 no store manager for that store temporarily, is that what
11 you're saying?

12 THE WITNESS: Correct.

13 HEARING OFFICER POWELL: And - okay. That was my really
14 one and only question.

15 Ms. Markey?

16 MS. MARKEY: Yeah, I have a few.

17 REDIRECT EXAMINATION

18 BY MS. MARKEY:

19 Q. With regard to the last question from Mr. Powell, is there
20 a term that's used for when you were managing the Mercer Mall
21 store and the Hopewell store at the same time?

22 A. Yes, it's called dual managing.

23 Q. And how long were you dual managing the Mercer Mall and
24 the Hopewell stores?

25 A. From the week of Thanksgiving until January 10th of this

1 year.

2 Q. Are you aware of any other store managers dual managing
3 stores?

4 A. Not currently, but have in the past, yes.

5 Q. Is that a fairly common occurrence?

6 A. Yes.

7 Q. You had some questions on cross examination from Mr.
8 Gaudioso and he asked you if the store manager's responsible
9 for all operations and you told him yes. Are you the only
10 person responsible for the operations in your store?

11 A. No.

12 Q. Who else is responsible for the operations in your store?

13 A. In what regard?

14 Q. And it was a fairly broad question so I will ask you some
15 more specific questions about operations. Do you consider
16 changing the store hours to be a part of operations?

17 A. Yes.

18 Q. You're not authorized to change the store hours, correct?

19 A. I am not.

20 Q. And you testified earlier that you're also not authorized
21 to close the store --

22 A. Correct.

23 Q. -- is that correct?

24 A. Yes.

25 Q. Are you authorized to shut off mobile ordering?

1 A. Not without permission.

2 Q. Who do you need to get that permission from?

3 A. Scott.

4 Q. Do you consider mobile ordering part of operations?

5 A. Yes.

6 Q. Is Scott ever able to direct the work of an ASM?

7 A. Yes.

8 Q. And with regard to fiscal decisions, you had testified
9 that you needed to get permission from Scott about the Indeed
10 posting because it was an expenditure, is that correct?

11 A. Yes.

12 Q. Are you able to make decisions on other expenditures on
13 your own?

14 A. Within -- within a certain allowance.

15 Q. What's that allowance that you're allowed to make
16 financial decisions?

17 A. \$20.

18 Q. Are you able to make any decisions with regard to fiscal
19 spending at your store over \$20?

20 A. No.

21 Q. Do you need to ask somebody if you want to make a fiscal
22 expenditure over \$20 at your store?

23 A. Yes.

24 Q. Who do you ask?

25 A. Scott.

1 Q. Is it difficult for you to schedule?

2 A. Yes.

3 Q. Is it complicated?

4 A. Yes.

5 Q. Have you complained more than once about doing the
6 schedules?

7 A. Yes.

8 Q. Do a lot of store managers complain about doing the
9 schedules?

10 A. Yes.

11 MR. GAUDIOSO: Objection. I'm going to object to that
12 and that's just inviting hearsay.

13 HEARING OFFICER POWELL: Correct. The objection's
14 sustained.

15 BY MS. MARKEY:

16 Q. You had some questions from Mr. Gaudioso and you
17 mentioned, Missy, creating the schedule versus posting the
18 schedule. And I don't want to go through testimony that we've
19 already covered on this, but I want to make sure that we have
20 talked about what is involved with creating the schedule versus
21 posting the schedule.

22 Is there anything that you didn't tell us about with
23 regard to creating the schedule?

24 MR. GAUDIOSO: I'm going to object to that question. I
25 don't think it's a proper question. She testified consistent

1 with any question that was posed to her. Now she's asked is
2 there anything that you didn't say to a question that wasn't
3 asked.

4 HEARING OFFICER POWELL: Yeah.

5 MS. MARKEY: And I can rephrase the question. I'm only
6 asking about creating the schedule. You asked her a lot of
7 questions about posting the schedule and whether Scott was
8 involved with that, you didn't ask her any about creating the
9 schedule and that's why I'm not sure whether that -- so I'm
10 just trying to close that loop.

11 HEARING OFFICER POWELL: I think you -- yes, Ms. Markey,
12 if you can ask the specific questions about that?

13 BY MS. MARKEY:

14 Q. You testified about posting the schedule and do you recall
15 telling Mr. Gaudioso so what you did about -- or that you
16 select the shifts and you're the one, and you alone, that picks
17 the shifts for the partners?

18 A. Yes.

19 Q. With regard to creating the schedule is there anything
20 that you confer with Scott about with regard to creating the
21 schedule?

22 A. That's essentially where consulting would also come in to
23 play because we can't post it without the approval of -- if we
24 went over on labor or anything like that, so around labor costs
25 and the hours spent around the different budgets allotted in

1 our scheduling system. So whether it's around training or non-
2 coverage we have different budgets that we have to schedule
3 accordingly and need approval to exceed those budgets.

4 Q. And to that process you testified about that you discuss
5 with Scott what options there are for support for the schedule
6 and if you need to exceed those numbers that's part of creating
7 the schedule or what you referred to as creating the schedule?

8 A. Yes.

9 Q. As distinguished from posting the schedule?

10 A. Correct.

11 Q. And with regard to getting the approval that you say you
12 can't post without approval, who does that approval come from?

13 A. Scott.

14 Q. You had two questions from Mr. Gaudioso about your
15 testimony with regard to promotion decisions and you said that
16 and explained that with regard to the shift supervisor you make
17 the determination whether they be a good shift supervisor, at
18 least with your opinion, but then that decision goes to
19 interviews from two store managers, is that correct?

20 A. Yes.

21 Q. And then you said that the store managers will share the
22 feedback on that interview, is that correct?

23 A. Correct.

24 Q. Who is that feedback from the interview for the shift
25 supervisor promotion shared with?

1 A. Myself usually, sometimes Scott, but mainly the store
2 manager that's having the interviews completed.

3 Q. And that what happens after those interview with the shift
4 supervisor, with the person who wants to be promoted into the
5 shift supervisor position?

6 A. So based on how they pass the interview, it would be a
7 discussion with Scott with this is the interview -- these are
8 the interviews, this is the feedback from interviews and this
9 is the recommended hire of the interview.

10 Q. And that happens before the promotion is offered to the
11 shift supervisor?

12 A. Yes.

13 MS. MARKEY: I don't have any further questions.

14 HEARING OFFICER POWELL: Mr. Gaudioso, do you have
15 anything?

16 MR. GAUDIOSO: Yes.

17 RE CROSS EXAMINATION

18 BY MR. GAUDIOSO:

19 Q. So you tell Scott you're recommending someone for a
20 promotion?

21 A. Yes.

22 Q. Okay. Has Scott ever said no, that person's not getting
23 promoted?

24 A. No.

25 Q. You mentioned -- you talked about dual managing?

1 A. Yes.

2 Q. And you said it was a common occurrence?

3 A. Yes.

4 Q. How many times have you dual managed a store? I heard you
5 talk about Mercer. How many other times have you done it?

6 A. That's it, that's the one time.

7 Q. And how long have you worked there?

8 A. As a store manager I've been enrolled since October 21st
9 of 2019.

10 Q. So in over two years, one time is a common occurrence for
11 you?

12 A. So it wasn't directed specifically towards me, it was as a
13 whole for the District and there are other store managers that
14 have dual managed in addition to the time that I dual managed.

15 Q. How many times?

16 A. That would be a question for Scott.

17 Q. But it's a question for you.

18 A. I don't have that answer.

19 Q. So you actually don't know if it's common or not.

20 A. I couldn't tell you a specific number. I can reference
21 two.

22 Q. Two. And again, is this the timeframe since you've been a
23 store manager?

24 A. Yes.

25 Q. So does that sound -- you tell me, I'm not trying to be

1 argumentative here, but the one time you've done it and the two
2 times you just referenced, that's three, three times, that
3 strikes you as being a common occurrence?

4 HEARING OFFICER POWELL: Okay, I'm -- don't answer that.
5 Mr. Gaudio, --

6 MR. GAUDIOSO: Okay.

7 HEARING OFFICER POWELL: Move on, okay?

8 MR. GAUDIOSO: Sure.

9 BY MR. GAUDIOSO:

10 Q. Ms. Knight, is it true that it's only been in the past few
11 -- past two to three months that you lost the ability to turn
12 off mobile ordering?

13 A. The -- the cadence has changed around how we do it, yes,
14 within the last few months.

15 Q. So prior to the cadence changing you were able to turn off
16 mobile ordering?

17 A. There would still need to be communication to Scott about
18 mobile being turned off and why.

19 Q. But you could do it?

20 A. I could. I still -- I mean I have the ability like it's
21 an email, so yes, I could do it.

22 Q. Have you been -- when you're out --

23 A. Oh, what do you mean?

24 Q. I'm sorry. When you're not in the store for any length of
25 time --

1 A. Okay.

2 Q. -- because you've been out sick, who does the scheduling?

3 A. It depends. So I have assistant managers to do
4 scheduling. I haven't had a specific occurrence where I've
5 needed somebody to take over my schedule if I'm out in general
6 and not just sick, so like paid time off, vacation, the store
7 manager watching my store would be responsible for payroll and
8 they could help with the schedule or like it's a part of their
9 covering, but I'd still do my schedule.

10 Q. So Scott's not doing it?

11 A. No.

12 Q. Okay.

13 MR. GAUDIOSO: Thank you, that's all I have.

14 HEARING OFFICER POWELL: Okay. All right, I really don't
15 have anything further. Ms. Markey, do you have anything?

16 MS. MARKEY: We do not, not with this witness.

17 HEARING OFFICER POWELL: Okay. Do you plan on calling
18 another witness?

19 MS. MARKEY: No. We will be making a motion to request
20 the extension of time on the briefing that I mentioned earlier.
21 I'm not sure if now is the appropriate time for that or not.

22 HEARING OFFICER POWELL: Okay, all right. No, it is
23 12:48. Why don't we go off the record right now.

24 COURT REPORTER: We're off the record.

25 (Whereupon, a recess was taken from 4:49 p.m. to 5:19 p.m.)

1 HEARING OFFICER POWELL: Let's go back on the record.

2 COURT REPORTER: We're on the record.

3 HEARING OFFICER POWELL: All right. Ms. Markey, do you
4 have any further rebuttal witnesses?

5 MS. MARKEY: We do not.

6 HEARING OFFICER POWELL: Okay. Does anyone have anything
7 further in this case?

8 MR. GAUDIOSO: No, sir.

9 HEARING OFFICER POWELL: All right.

10 MS. MARKEY: No.

11 HEARING OFFICER POWELL: All right. In this regard, I'm
12 going to order that the briefs are due in this matter on five
13 days from today's date, which is February 10th, 2022. If the
14 parties or any party wishes an extension of time they should
15 make that request to the Regional Director of Region 22. They
16 should include the position of the parties on whether that
17 extension should be granted. Okay?

18 MS. MARKEY: Understood.

19 MR. GAUDIOSO: Understood.

20 HEARING OFFICER POWELL: All right. So briefs are due
21 February 10th. Now, on behalf of the Petitioner, Mr. Gaudioso,
22 would you go to an election in a unit found appropriate by the
23 Board other than the one petitioned for if so ordered by the
24 Board, rather?

25 MR. GAUDIOSO: Well, procedurally I'm not sure if we can

1 because I don't think we have a showing. If the alternative to
2 the single store unit is District 761 and we haven't given you
3 a showing of interest --

4 HEARING OFFICER POWELL: Okay.

5 MR. GAUDIOSO: -- the short answer would be no.

6 HEARING OFFICER POWELL: Okay, so -- I'm sorry. The
7 question should have been asked to Ms. Markey as well. Would
8 the Employer go to an election if one is so ordered in a unit
9 found appropriate by the Board that's not the District-wide?

10 MS. MARKEY: Yes, since we've heard the answer to this
11 question, I don't see what grounds at this point we'd have not
12 to, but --

13 HEARING OFFICER POWELL: Okay.

14 MS. MARKEY: Yeah, I have the same concerns with regards
15 to the District, but I know it's not the question that you're
16 asking us --

17 HEARING OFFICER POWELL: Right.

18 MS. MARKEY: -- with regard to the showing of interest so
19 --

20 HEARING OFFICER POWELL: So the Employer would be, okay.
21 All right.

22 If there's nothing further then the hearing will be closed.

23 All right, hearing no response this hearing is now closed.
24 (Whereupon, at 5:23 p.m., the hearing in the above entitled
25 matter was closed.)

CERTIFICATION

This is to certify that the attached proceedings before the National Labor Relations Board (NLRB), Region 22, in the matter of Starbucks Corporation and Workers United, Case No. 22-RC-288780, via Zoom, on February 3, 2022, was held according to the record, and that this is the original, complete, and true and accurate transcript that has been compared to the recording from the hearing, that the exhibits are complete and no exhibits received in evidence or in the rejected file are missing.



Marybeth Burke-Dring

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION 22

Starbucks Corporation,

Employer

and

22-RC-288780

Workers United,

Petitioner.

WORKERS UNITED'S POST-HEARING BRIEF

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I. INTRODUCTION

The sole question before the Regional Director is whether Starbucks Corporation (the “Company” or “Starbucks”) has successfully rebutted the NLRB’s presumption that a single-store unit is appropriate for an RC petition filed by Workers United (hereinafter “Union”) at Starbucks’ Hopewell, New Jersey store located at 800 Denbow Road, Pennington, NJ. Starbucks has not rebutted the presumption because the undisputed record evidence shows that the Store Manager at the petitioned-for store exercises virtually all meaningful control over labor relations. In addition, the competent record evidence fails to alter the conclusion that employee interchange is infrequent and always voluntary. The record evidence in the instant case is nearly identical to the other single-store Starbucks units that have been found appropriate on two separate occasions by NLRB Region 3¹ as well as in NLRB Region 28². It is also nearly identical, with the notable exception of the Borrowed Partner Analysis data (which Starbucks avoided placing in the instant record), to the record evidence in a plethora of other cases for which the Hearing Officer took administrative notice.^{3,4}

For these reasons, and as described in detail below, the Union respectfully requests that the Regional Director issue a Decision and Direction of Election to hold an election at the Hopewell store without delay.

¹ 03-RC-282115, 03-RC-282127, and 03-RC-282139 (consolidated) (“Buffalo I”) and 03-RC-285929, 03-RC-285986, and 03-RC-285989 (consolidated) (“Buffalo II”).

² 28-RC-286556 (“Mesa, AZ”).

³ The Hearing Officer took administrative notice of the records in Case Nos. 03-RC-282115 (Buffalo I – Elmwood), 03-RC-282139 (Buffalo I – Genesee Street), 03-RC-282127 (Buffalo I – Camp Road), 03-RC-285929 (Buffalo II – Walden Avenue), 03-RC-285986 (Buffalo II – Sheridan Drive), 03-RC-285989 (Buffalo II – Transit Road), 28-RC-286556 (Mesa, Arizona), 01-RC-287639 (Boston – Coolidge Corner), 01-RC-287618 (Boston – Commonwealth Avenue), 19-RC-287954 (Seattle, Washington), and 10-RC-288098 (Knoxville, Tennessee). Bd. Ex. #7

⁴ Starbucks’ exhibits are cited as “(Er. Ex. #)”, “Petitioner’s exhibits as cited as “(Pet. Ex #),” Board exhibits are cited as “(Bd. Ex. #)”.

II. RELEVANT CASE LAW ANALYSIS REGARDING THE PRESUMPTIVE APPROPRIATENESS OF THE SINGLE STORE UNIT

The Board has long held that a petitioned-for single-facility unit is presumptively appropriate unless it has been so effectively merged or is so functionally integrated with other facilities that it has lost its separate identity. *Dixie Belle Mills, Inc.*, 139 NLRB 629, 631 (1962). The party contesting a single-facility unit bears a “heavy burden of overcoming the presumption.” *California Pacific Medical Center*, 357 NLRB 197, 200 (2011). To rebut this presumption, the Employer “must demonstrate integration so substantial as to negate the separate identity” of the single store units. *Id.* To determine whether the single-facility presumption has been rebutted, the Board examines: (1) central control over daily operations and labor relations, including the extent of local autonomy; (2) similarity of employee skills, functions, and working conditions; (3) the degree of employee interchange; (4) the distance between locations; and (5) bargaining history, if any exists. *See, e.g., Trane*, 339 NLRB 866, 867 (2003); *J & L Plate, Inc.*, 310 NLRB 429, 429 (1993). These same factors apply in the retail chain setting. *See, e.g., Red Lobster*, 300 NLRB 908, 912 (1990); *Foodland Of Ravenswood*, 323 NLRB 665, 666 (1997).

The record evidence in this case clearly shows that Starbucks cannot meet the heavy burden of overcoming the presumption that the petitioned-for single-store unit is appropriate. First and foremost, there has simply been no new or compelling facts suggesting that the Store Manager in Hopewell operates her store with a lesser degree of autonomy than the Store Managers in Elmwood, Genessee Street, Camp Road (The Buffalo I stores), Walden Avenue, Sheridan Drive, Transit Road (the Buffalo II stores), or the Mesa store. To the contrary, and as acknowledged by Starbucks’ witness, District Manager Scott Thibedeau, the Hopewell store is managed and run with the same policies and procedures as found at any Starbucks store in the country. That is to say, the Store Manager in Hopewell is vested with significant autonomy in handling a range of operational and labor relations matters to the same extent as by the Store Manager in the above-named locations.

The Board has consistently analyzed the question of an appropriate unit by placing the most weight on consideration of managerial control, especially over labor relations. The natural focus of the Board's attention in analyzing control over labor relations is the role of any managers in the individual stores. In *Sav-On Drugs*, the Board cited "the substantial authority of the store manager" including "complete hiring authority with respect to part-time employees" and also the power to "interview applicants for full-time positions and hire them upon approval of the division manager" to support a single facility unit. *Sav-On Drugs, Inc.*, 138 NLRB 1032, 1033 (1962); see also *Hilander Foods*, 348 NLRB 1200, 1202 (2006).

It is appropriate to find control over labor relations supports the presumption of a single store unit even when positions higher than the Store Managers have some role or control over management functions. For example, in *Eschenbach-Boysa Co.*, even though the owner of two supermarkets "reserves for himself many management prerogatives[.]" the Board found the employer had not rebutted the presumption because the managers at the two facilities "interview and hire employees, grant time off, and resolve employee problems and complaints." *EschenbachBoysa Co.*, 268 NLRB 550, 551 (1984). In *Bud's Thrift-T-Wise*, the Board upheld a single unit because "the individual store managers exercise considerable authority in personnel matters[.]" and even though "the Employer's president establishes labor relations policies and employee benefits, the record discloses that the individual store managers also have and exercise substantial authority and play a direct role in the implementation of labor relations policies affecting the employees in their respective stores." *Id.* The Board was

persuaded by the facts that store managers interview prospective employees for hire and either directly hire part-time employees or make effective recommendations with respect thereto; that they have and exercise the authority to discharge employees or effectively recommend such actions; and that they may suspend employees for disciplinary reasons, grant time off, schedule employee shifts, vacations, and overtime, adjust employee grievances, evaluate employees for purposes of wage increases, participate in the determination as to the promotion of employees from part-time to full-time status, and advise the Employer concerning staffing needs which may involve employee transfers.

Bud's Thrift-T-Wise, 236 NLRB 1203, 1204 (1978).

In *Red Lobster*, the Board determined a single location unit was appropriate, again despite some control and participation by managers that ranked above the store-level managers. The Board described the respective roles of the in-store manager and the manager above that position, finding, as here, that they exercised control over most aspects of labors relations. *Red Lobster*, 300 NLRB 908, 911 (1990).

The Board summarized the significance of this consideration in *Renzetti Market*, where it upheld a single facility unit because

matters which are of the keenest interest to the employees are handled within the store, and the employees know that in most instances the store management does not have to venture outside of the store for approval of its decisions. Judged against the criteria set forth above, it is apparent that the immediate supervision and day-to-day concerns at Store No. 1 are separate and autonomous from those at Store No. 2.

Renzetti's Mkt., Inc., 238 NLRB 174, 176 (1978).

Thus, even where there was substantial centralization of authority and considerable product integration between facilities, the Board has held that a single facility could constitute a separate appropriate unit if the requested facility retained a substantial degree of autonomy. See *The Black and Decker Manufacturing Company*, 147 NLRB 825 (1964).

III. THE EVIDENCE OF RECORD CONCERNING THE HOPEWELL STORE DOES NOT COMPEL A DIFFERENT RESULT FROM EARLIER DDEs

The practical application of the relevant case law to the facts as they relate to the Hopewell store should result in the same outcomes as were determined in the Buffalo I, Buffalo II and Mesa DDEs. That these same outcomes are warranted instantly should come as no surprise as Region 22 is faced with an essentially homogenized case presentation regarding an essentially homogenized corporate structure that markets an essentially homogenized product in the context of a homogenized customer experience. To the degree, therefore, that Starbucks may argue that it maintains centralized operational control over such macro-level matters as employee benefits, policy guides,

store location, store openings/closings, product placing/offerings or staffing levels, such arguments were wholly unavailing when raised in earlier cases for which DDEs have been entered. In this regard, the analysis of Region 28 Regional Director Cornele Overstreet is particularly useful to the issue of Centralization of Operations:

The Board has long recognized that it "is common in retail chain operations, and particularly in food chains, [for there to be] a considerable degree of centralized administration in the functioning of ... stores." *Angeli's Super Valu*, 197 NLRB 85, 85 (1972). It has noted that, "though chainwide uniformity may be advantageous to the employer administratively, it is not a sufficient reason in itself for denying the right of a separate, homogeneous group of employees, possessing a clear community of interest, to express their wishes concerning collective representation." *Haag Drug*, 169 NLRB at 878.

The Employer operates a highly centralized national retail chain operation and takes great care and pride in executing a standardized customer experience across its locations. To accomplish this, it relies heavily on its centralized operating procedures, including distribution channels, store design, and product offerings, placement, marketing, and promotions, as evidence of functional integration. **Notwithstanding the Employer's evidence of centralized operations, such a circumstance is not considered a primary factor in the consideration of single-store units in the retail industry.** *Id.* (emphasis added).

(Mesa), DDE at p. 12.

As aforesaid, what are considered to be the primary factors in the single store unit analysis are the issues of control over daily operations and labor relations. See, 28-RC-286556 (Mesa), DDE at 13. ("The Board considers evidence of local autonomy in daily operations and labor relations to be key considerations in assessing the appropriateness of single store units in retail chain operations"). In this respect, the Regional Director should note well that Starbucks' own Partner Guide (Er. Ex #2) bakes autonomous local control of daily store operations into the very job description of the Store Manager itself:

Store manager: the store manager is ultimately in charge of all store operations and directs the work of the assistant store manager(s), shift managers (where applicable), shift supervisors and baristas. **The store manager is responsible for personnel decisions; scheduling, payroll and fiscal decisions.** A store manager is considered full-time and is generally scheduled to work at least 40 hours each week. Er. Ex #2, p.13

Starbucks also maintains a stand alone job description for the Store Manager that was entered into evidence in the Buffalo I case as Petitioner Exhibit 13. This document highlights and confirms the autonomous nature of the Store Manager position as follows:

Job Title: store manager

Job Summary and Mission

This job contributes to Starbucks success by leading a team of store partners to create and maintain the Starbucks Experience for our customers and partners. **The store manager is required to regularly and customarily exercise discretion in managing the overall operation of the store. In particular, a majority of time is spent supervising and directing the workforce, making staffing decisions (i.e., hiring, training, evaluating, disciplining, discharging, staffing and scheduling), ensuring customer satisfaction and product quality, managing the store's financial performance, and managing safety and security within the store.** The incumbent is responsible for modeling and acting in accordance with Starbucks guiding principles.

Buffalo I, Pet. Ex #13 (emphasis added).

At this juncture, a comparison of the Store Manager job description to that of the District Manager job description is warranted as Starbucks appears to argue that it is District Manager Scott Thibedeau who wields ultimate authority in the Hopewell store.

Job Title: mgr district – Retail

Job Summary and Mission

This job contributes to Starbucks success by **leading a team of store managers** within an assigned district to achieve business results while creating and maintaining the Starbucks Experience for our customers and partners. The district manager is required to regularly and customarily exercise discretion in managing the overall operation of the stores within the assigned district. **The majority of time is spent staffing, coaching, developing and managing the performance of store managers,** understanding local customer needs, ensuring district-wide customer satisfaction and product quality, analyzing key business indicators and trends, managing the district's financial performance, and managing safety and security within the district. The incumbent is responsible for modeling and acting in accordance with Starbucks guiding principles.

Buffalo I, Pet. Ex. #11 (emphasis added)

Clearly, this description simply emphasizes district wide responsibilities and the District Managers' relationship with Store Managers rather than other store level employees. It is also consistent with the cross-examination testimony of Mr. Thibedeau who frequently acknowledged the fact that day-to-day labor relations matters at the Hopewell store are routinely and consistently handled by the Store Manager.

1. In and of itself, Starbucks Partner Guide completely undermines its argument that authority over store level labor relations matters rests beyond the Store Manager.

Well beyond defining the Store Manager as the "person in charge of all store operations", the Partner Guide clearly and repeatedly establishes the Store Manager as the primary person in charge of a host of day-to-day labor relation functions. Notwithstanding its attempt over two days of hearing to walk back its clear provisions, Starbucks simply cannot dispute the autonomy the Partner Guide vests with Store Managers with regard to the core factors relevant to the appropriate unit question:

The responsibility of hiring store partners belongs to each Starbucks store manager depending on the store's particular business needs.⁵

Er. Ex #2, p. 14 (emphasis added).

An hourly partner will be asked to provide a schedule of the days and hours available to work by filling out a Partner Availability Form. With this information and that of fellow partners, **the store manager will create a weekly work schedule for the store** that balances partner availability and business needs.

If a partner's availability changes, the partner should complete a new Partner Availability Form and give it to the manager for scheduling consideration.

⁵ As part of the hiring process, Starbucks also provides guidelines to assist the Store Manager in conducting interviews with Baristas and Shift Supervisors. These guidelines were entered into the Buffalo I record as individual exhibits. The exhibit showing interview guidelines when Store Managers are hiring Baristas emphasizes a great deal of agency on the part of the Store Managers conducting the interviews, contrary to the generalized testimony of the Company witnesses on this point. The document contains numerous references to the fact that the Store Manager should use their own experience and authority to carry out the interview, including references to: "to share your experience, and build a connection with the candidate. Offer the candidate a beverage or share a coffee press of your favorite coffee and describe what makes it your favorite!", to "Discuss the Starbucks Experience with the candidate. Share how creating Best Moments come to life in your store[,] and to "Describe a day in the life of a Barista." Buffalo I, Er. Ex. 10 at 1. These demonstrate that Store Managers are not simply following a script while conducting interviews. While they follow a general structure established by the Company, they are still exercising independent thought and experience in doing interviews. The Company exhibit for interviewing Shift Supervisors has parallel language throughout, and the same points apply to this. Buffalo 1, Er. Ex. 11.

The store manager posts weekly work schedules in advance so partners can plan ahead. For this reason, **a partner should submit a request for planned time off from work to the store manager for approval** as far in advance as possible.

Assistant store managers and store managers are expected to be fully committed to the operations of their store. These positions are considered full-time and generally require at least 40 hours of work each week.

Er. Ex. #2, p. 15 (emphasis added)

A partner must not punch in prior to the start of the scheduled shift, unless instructed to do so by a shift supervisor, shift manager, assistant store manager or store manager.

Er. Ex #2, p. 16

If a partner forgets to punch in or out, or makes a time recording error, the partner must immediately notify a shift supervisor, shift manager, assistant store manager or store manager and record the time actually worked on the store's Punch Communication Log (PCL). The store manager or ASM will initial the entry to verify it (the partner will initial to verify any entries made by a manager or supervisor). The store manager will then correct the partner's time record in the timekeeping system.

Er. Ex #2, p. 17

Starbucks is committed to ensuring that partners are accurately paid for all time worked. Meeting that commitment in our stores is primarily the responsibility of the store manager. **The store manager is responsible for ensuring that payroll information is correct before processing payroll and that any inaccuracies are corrected in a timely manner.** Additionally, all other store partners are responsible to some extent for ensuring that their hours of work are recorded timely and accurately.

Er. Ex #2, p.18 (emphasis added)

A partner who is required to report tips to Starbucks **should consult with the store manager for tip handling, storage, reporting and other procedural details**

Er. Ex. #2, p. 21 (emphasis added)

A partner whose disability is negatively impacting their ability to perform the job is encouraged to contact their manager to discuss the circumstances, so that Starbucks can evaluate the situation and make reasonable accommodations. Managers will treat such information as confidential, except to the extent other partners need to know to accommodate the partner concerned.

Starbucks will make reasonable efforts to make other workplace accommodations on a temporary or permanent basis as required by applicable law. **A partner should talk to their manager to request a workplace accommodation,** such as for religious reasons, pregnancy or lactation, or for reasons related to domestic violence, sexual assault, or stalking.

Er. Ex. #2, p. 26 (emphasis added)

If a partner cannot report to work as scheduled or will be late to work, the partner must call and speak directly with the store manager or assistant store manager with as much advance notice as possible prior to the beginning of the shift. If a manager is not in the store, the partner should notify the partner leading the shift.

If a partner will be unable to report to work for a scheduled shift and knows in advance, it is the partner's responsibility to notify the store manager or assistant store manager and for the partner to arrange for another partner to substitute.

In the event of an unplanned absence, e.g., the sudden onset of illness, injury or emergency, or when the partner is using paid sick leave allowable by law, the partner will not be held responsible for finding a substitute. **The partner is still responsible for notifying the store manager or assistant store manager** (or partner leading the shift if the manager is not in the store) of the absence prior to the beginning of the shift so coverage can be arranged if needed.

Er. Ex #2, p. 27 (emphasis added)

A partner who is experiencing symptoms such as vomiting, diarrhea, jaundice, sore throat with fever, or a medically diagnosed communicable disease **must notify the manager**. The manager will determine whether work restrictions apply.

Partners are the face of our brand, connecting with our customers every day. All partners are expected to follow these standards during the workday. **Partners should direct questions to the store manager**, who will decide what is appropriate or not within the dress code.

Er. Ex #2, p. 28 (emphasis added)

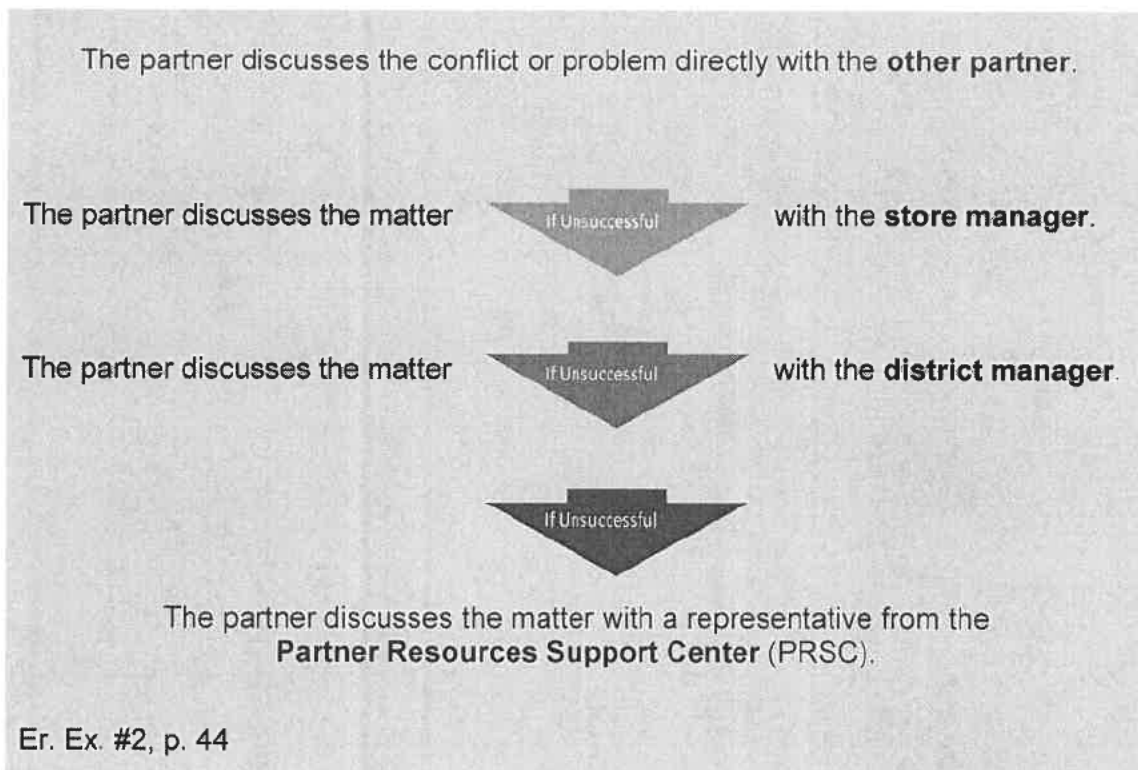
Partners may review their personnel records at reasonable intervals by contacting the manager. The partner may discuss concerns about the contents of the file with the manager, next-level manager or the Partner Resources Support Center at (888) SBUX411 (728-9411). If a partner disagrees with anything in the file, the partner may submit a written response for inclusion in the file.

Er. Ex #2, p. 41

The most important working relationship a partner will have at Starbucks is the one with the manager, who is there for support. To provide that support, managers need to know of any concerns or questions. Partners should talk with their manager if they have any questions, concerns or suggestions regarding their position or responsibilities.

Starbucks endorses an atmosphere of mutual respect and support. If a partner experiences a disagreement or conflict with another partner, the partner should first discuss the problem with the other partner and make every effort to resolve it in a respectful manner. If unsuccessful, the partner should seek manager assistance in resolving the matter respectfully and professionally.

Er. Ex. #2, p. 43 (emphasis added)



Starbucks uses a conversation-based approach to performance and development.

In addition to ongoing coaching, each partner will have at least two formal 1:1 Performance and Development Conversations with the manager each year. The goal of ongoing Performance and Development Conversations is to have two-way dialogue about partner performance, the partner's contributions to the store or district, how the partner wants to develop, and career goals.

Er. Ex. #2, p. 47 (emphasis added).

Additionally, store managers are responsible for administration of the safety program within the store as well as the correction of safety hazards, supported by field management and the Global Safety and Compliance team at Starbucks Support Center. Starbucks will take appropriate steps to address safety issues in a prompt and responsible manner.

Any accident or incident in the store involving a partner or a customer must be reported to the manager, and the appropriate incident report must be submitted.

Er. Ex. #2, p. 49 (emphasis added)

Vacation time must be requested in advance, preferably at least 30 days, in order to plan for the partner's absence. **The partner should submit the vacation request to the store manager for approval** by completing the store's Paid Time Off Log.

Er. Ex. #2, p. 51 (emphasis added)

To take a personal day, an eligible partner must submit a request to the manager in advance for approval.

Er. Ex. #2, p. 53 (emphasis added)

Serving on a jury is a fundamental responsibility of citizenship. If summoned to serve on a jury or if subpoenaed to testify as a witness, **the partner should immediately provide the manager** a copy of the summons or subpoena and make arrangements with the manager for the time away from work.

Er. Ex. #2, p. 55 (emphasis added)

An hourly partner is required to receive approval for vacation, jury/witness duty, bereavement time or military service pay from the store manager. The store manager will accurately report paid time off in the timekeeping system for each day that work is missed.

Er. Ex. #2, p. 56 (emphasis added)

Consult the *U.S. Benefits Plan Description* or call (866) 206-6769 for information on reinstatement following a leave, including requirements for notifying the manager and providing medical documentation.

Er. Ex. #2, p. 58

If at all possible, a partner should provide two weeks' notice to the manager if choosing to resign from employment with Starbucks.

A partner must return all company property to the manager on or before the last day of work. Company property may include, but is not limited to, store keys, Starbucks® aprons, laptop computer, company purchasing card, company travel and entertainment card, mobile device, partner identification card and training materials.

Er. Ex. #2, p. 72 (emphasis added)

In addition to the Partner Guide, there are other Starbucks documents that further confirm the autonomous functioning of the Store Manager. For example, The Partner Planning Tool reinforces the role of Store Managers in determining staffing issues, since it directs District Managers to consider the following:

Do your **store managers proactively consider staffing changes** for the next two months? Do your **store managers consider the availability of all partners** (including those of LOA and from other stores) prior to hiring? Do your **store managers effectively prioritize and plan time to identify and close staffing gaps?**

Buffalo I, Er. Ex. #5 (emphasis added)

Likewise, the Corrective Action Form entered into the record as Er. Ex #14 provides spaces for the Partner's name and Statement of Situation, the Store Manager's name (marked as "Manager") and Statement of the Situation and is signed by the Partner and Store Manager. The document contains an instruction for Store Managers. "Manager: Print two copies of this form. Give one signed copy to the partner and retain one signed copy in the store partner file." (*Id.*) Nothing in the form indicates that a District Manager is involved in the issuance of this disciplinary matter.

Starbucks' Partner Availability Form, entered into the record as Er. Ex #15 further highlights the role of the Store Manager in scheduling and instructs partners to "[P]lease return this form and **discuss with your store manager** upon completion. **Your store manager will** use this information as well as the business needs of the store to build a schedule that balances both." (*Id.*) The form further notes that the store manager will have "ongoing conversations with [the partner] to see how we are doing." (*Id.*) As with the other exhibits, the Partner Availability Form is signed by the Partner and Store Manager.

In total, therefore, there can be no question that the objective documentation of record clearly and unequivocally establishes that autonomous control over the day-to-day labor relations functions in the Hopewell store rests first and foremost with the Store Manager.

IV. THE TYPE AND DEGREE OF EMPLOYEE INTERCHANGE FAVORS SINGLE-STORE UNITS

Employee interchange is an important factor in the appropriate unit analysis. It is part of a larger determination of whether there is "functional integration of a sufficient degree to obliterate separate identity" between stores. *Haag Drug Co.*, 169 NLRB 877, 877 (1968). An occasional covered shift or holiday coverage will not suffice; rather, only "substantial employee interchange destructive of homogeneity" will contribute to overcome the presumption. *Id.* at 878. The Board also distinguishes between voluntary and involuntary interchange and accords less weight to permanent than temporary transfers. *See Red Lobster*, 300 NLRB 908, 911 (1990) ("we find that the degree of

employee interchange is minimal, and the significance of that interchange is diminished because the interchange occurs largely as a matter of employee convenience, i.e., it is voluntary" [...] Permanent transfers [are] a less significant indication of actual interchange than temporary transfers"). Here, the Company has not and cannot establish a single involuntary and the amount of employee interchange at the Hopewell store does not destroy homogeneity in any of the units.

The Company's evidence does not establish significant employee interchange at the Hopewell store. First, the Company has not presented any evidence of involuntary transfer at any of the stores. Every "borrowed" shift has been completely voluntary a fact acknowledged by Employer and Union witness alike. This simple fact diminishes the argument that such interchange should overcome the appropriateness of single-store units. Employees are in control of where they work, so under Board law they should be allowed to form and bargain in separate units if they desire. Second, the Company's evidence of "borrowed" partners does not rise to the level of "substantial employee interchange destructive of homogeneity" under the law.

With respect to the expert testimony proffered by Starbucks at the hearing, it should be well noted that the presentation of Abby Clay Turner was essentially no different from that which she, or her colleagues at Charles River Associates ("CRA"), presented in Buffalo I, Buffalo II, Mesa, Knoxville, and at this point, other cases currently before various regions across the country. This presentation purports to prove a considerable amount of employee interchange amongst the partners in the District 761 stores. Regarding the substance of the CRA report and Dr. Turner's testimony, it is worthless to the relevant analysis in this case, because it is premised on too many contrived and self-serving framing devices, all of which are stacked on top of each other. These framing devices do not follow the straightforward analysis demanded by the NLRB's authority on interchange. Under the law, the appropriate question is whether interchange is so great in volume as to fundamentally alter, or even destroy, the identity of the workforce at the petitioned-for unit. See *Hilander Foods*, 348 NLRB 1200 (2006); *Cargill, Inc.*, 336 NLRB 1114, 1114 (2001); *Haag Drug Co.*, 169 NLRB 877, 878 (1968), In other words, the correct analysis is whether employees in a store are able to identify themselves as

part of a group of employees who belong to the store, or whether the amount of work being done by people from other stores is so large that the store ceases to have an identifiable workforce. After all, the NLRB's analysis essentially asks whether interchange is regular and substantial enough to rebut the presumption that a single-store unit is appropriate. See *Cargill, Inc.*, 336 NLRB 1114, 11145 (2001)(holding interchange did not rebut the presumption in part because it was "neither regular nor substantial"); see also Board Order Denying Employer's Request for Review in Cases 03-RC-282115, 03-RC-282127, 03-RC-282139, (Buffalo I) December 7, 2021, n. 2.

Further, and most notably, Starbucks avoided the inclusion of "Borrowed Partner Analysis" data calculations in the Hopewell case though such data was part of the record in Buffalo I (Er. Ex #24), Buffalo II (Er. Ex # 107), Mesa (Er. Ex #208) and Knoxville (Er. Ex. #1). The reason for this omission is evident and warrants a negative inference in the Regional Director's analysis. Far from the double digit percentages that Starbucks alleges constitutes the rate partners work in multiple stores over a pre-determined "relevant" period, the Borrowed Partner Analysis data indicates insignificant rates of employee interchange when comparing the total number of partner shifts and hours worked at a specific store by borrowed partners versus the total number of shifts and hours actually available in that store in a given year. When this data was analyzed in the Knoxville case, for example, the percentage of total hours worked in the petitioned for store by borrowed employees from other stores was found to be 1.56% in 2020, 0.57% in 2021 and 0.32% so far in 2022. See, Knoxville, Workers United Post-Hearing Brief, p.4.

It is also noteworthy that in the instant case, Dr. Turner (who likewise testified in the Knoxville case) admitted that she had access to the same Borrowed Partner Analysis data as resulted in the aforementioned percent of total petitioned for store hours worked by borrowed partners but did not perform such a calculation. In place of a straight-forward, readily understandable analysis that measures employee interchange by comparing actual shifts and hours worked at the Hopewell store by non-Hopewell partners as a percentage of total shifts and hours available at the Hopewell store over a specific period of time, Dr. Turner offered needlessly complex, contrived and duplicative graphs

that purport to show extensive interchange between stores in District 761. Er. Ex #21, 22. These graphs make no distinction between voluntary versus forced borrowing (and in fact, *all* borrowing is voluntary), do not account for whether a partner worked an hour, a shift or multiple consecutive shifts in another store, purport to show averages, medians and various other permutations of measurement, and otherwise fail to provide the Regional Director with an accurate and reliable calculation of actual, day-to-day interchange in the Hopewell store. A calculation of a percentage readily available to Starbucks based on actual, quantitative data of all hours worked by non-Hopewell employees is ignored precisely because it doesn't just fail to support the Employer's narrative – it eviscerates it. As Starbucks self-serving analysis is facially irrelevant to the analysis at hand, it should be found unavailing, consistent with the Regional Director and Acting Regional Director findings in Buffalo I (DDE, p. 19-22), Buffalo II (DDE, p. 25-27) and Mesa (DDE, p. 15-17).

V. THE SIMILARITY OF JOB SKILLS AND PRODUCT INTEGRATION AT STARBUCKS DOES NOT UNDERMINE SINGLE-FACILITY UNITS, AND WORKING CONDITIONS DIFFER SIGNIFICANTLY AT THE INDIVIDUAL STORES

The Board considers the similarity of job skills, plant and product integration, and working conditions in the appropriate unit analysis. These factors are not as important in the retail industry, where uniform skills and product integration are common, and are considered more relevant to determine whether petitioned-for multilocation units are appropriate, rather than to overcome the single-facility presumption. See *Exemplar, Inc.*, 363 NLRB No. 157, slip op. at 3–4 (2016); *Haag Drug Co.*, 169 NLRB at 877-878; see also *Hilander Foods*, 348 NLRB at 1203.

Here, the job skills of baristas and shift supervisors at Starbucks stores are similar, since they use and sell similar products, and all are under the same pay and benefits scheme. However, working conditions at the stores are not uniform, as some Starbucks stores in District 761 market have different operating hours. Because the similar skills and products at the separate stores have little significance, and there are significant differences in the working conditions at the stores, the Company fails to rebut the single-facility presumption.

1. The similarity of job skills at Starbucks stores is insignificant in the appropriate unit analysis for single-facility Retail Units.

Since 1962, the Board has applied the single-facility presumption to retail stores. *Sav-On Drugs, Inc.*, 138 NLRB 1032, 1033 (1962) (“We have decided to [...] apply to retail chain operations the same unit policy which we apply to multiplant enterprises in general”). The Board explained its change several years later:

Absent a bargaining history in a more comprehensive unit or functional integration of a sufficient degree to obliterate separate identity, the employees’ “fullest freedom” is maximized, we believe, by treating the employees in a single store or restaurant of a retail chain operation as normally constituting an appropriate unit for collective-bargaining purposes. The employees in a single retail outlet form a homogeneous, identifiable, and distinct group, physically separated from the employees in the other outlets of the chain; they generally perform related functions under immediate supervision apart from employees at other locations; and their work functions, though parallel to, are nonetheless separate from, the functions of employees in the other outlets, and thus their problems and grievances are peculiarly their own and not necessarily shared with employees in the other outlets.

Haag Drug Co., 169 NLRB at 877-878. Therefore, in the retail industry it is common for employees to perform similar jobs, but if they do so under separate supervision “their work functions, though parallel to, are nonetheless separate from, the functions of employees in other outlets.” *Id.* Here, there is no dispute that baristas and shift supervisors perform essentially the same functions at different stores. However, such functions are distinct because they are coordinated and supervised by the store manager at each location. The similarity in skills loses relevance with separate and distinct supervision at each of the locations and therefore the similarity in skills for baristas and shift supervisors across Starbucks stores does not carry any weight here. See Order Denying Request for Review, n. 2 (“we agree with the Acting Regional Director, for the reasons she stated, that the remaining factors under the Board’s single facility test—similarity of employee skills, functions, and working conditions; geographic proximity; and bargaining history—are not sufficient to rebut the single-facility presumption, especially given the lack of centralized control and interchange”).

2. Product and plant integration are only relevant in certain niche industries, not the retail industry.

Since the 1960s when the global economy began to become more integrated and product and plant integration became more standard, the Board has recognized that such integration is not important to determine appropriate units:

[P]roduct integration is becoming a less significant factor in determining an appropriate unit because modern manufacturing techniques combined with the increased speed and ease of transport make it possible for plants located in different States to have a high degree of product integration and still maintain a separate identity for bargaining purposes.

Black & Decker Mfg. Co., 147 NLRB 825, 828 (1964). That case was in the manufacturing industry, and no case has ever held that because certain stores use the same cups, plates, or apps that they cannot bargain as individual units. The Board recognizes that retail chain restaurants are built on a business model which requires uniform products throughout the chain. However, this does not undermine the appropriateness of single-facility units since the Board prioritizes the “fullest freedom” of employees to exercise their Section 7 rights. See *Haag Drug Co.*, 169 NLRB at 877-878. The Company cannot rebut the single-store presumption because each store uses uniform Starbucks products nationwide.

Plant integration is also only pertinent in a handful of niche industries. For example, the Board has held only system-wide units appropriate for a public utility company, *New England Telephone Co.*, 280 NLRB 162, 164 (1986), and fleetwide units appropriate in the maritime industry. *Inter-Ocean Steamship Co.*, 107 NLRB 330, 332 (1954); but see *Keystone Shipping Co.*, 327 NLRB 892, 895–896 (1999). Such industries are difficult to have single-facility units because of the high degree of interdependence. See *New England Tel. Co.*, 280 NLRB at 164 (“That judgment has plainly been impelled by the economic reality that the public utility industry is characterized by a high degree of interdependence of its various segments and that the public has an immediate and direct interest in the maintenance of the essential services that this industry alone can adequately provide. The Board

has therefore been reluctant to fragmentize a utility's operations."). The Board has never had such concerns with interdependence for retail chain outlets.

VI. THE ABSENCE OF A BARGAINING HISTORY BETWEEN THE PARTIES AND THE EXTENT OF ORGANIZATION FAVOR A SINGLE-STORE UNIT.

Both the fact that there is no bargaining history between the parties, and the Union's organizing efforts on a store-by-store basis favor a single-store unit.

1. There is no bargaining history.

There is no bargaining history between Starbucks and Workers United. Bargaining history is an important factor in the Board's analysis, and when there is no bargaining history it supports upholding the single-store presumption. See *Sav-On Drugs, Inc.*, 138 NLRB at 1034–35; *Lipman's, A Div. of Dayton-Hudson Corp.*, 227 NLRB at 1438; *Renzetti's Mkt., Inc.*, 238 NLRB at 176; *Eschenbach-Boysa Co.*, 268 NLRB 550, 551 (1984); *Hilander Foods*, 348 NLRB at 1202-03. Only when there is a history of multilocation bargaining does it favor overturning the single-store presumption. *Spartan Department Stores*, 140 NLRB 608, 610 (1963) (regionwide); *Meijer Supermarkets, Inc.*, 142 NLRB 513, 514 (1963) (chain wide). Here, the parties stipulated that there is no bargaining history. (Bd. Ex. 2). Therefore, the fact that there is no bargaining history between the parties supports the appropriateness of single-store units.

2. Workers United has organized individual units store-by-store.

Workers United has only organized individual Starbucks locations across the country, including the Hopewell store. While not controlling, the Union's organizing efforts may be a persuasive factor in the appropriate unit analysis. See *NLRB v. Metropolitan Life Ins. Co.*, 380 U.S. 438 (1965); *Dixie Bell Mills, Inc.*, 139 NLRB 629 (1962). The relevant question is not *where* the Union is organizing, but *what* units it seeks to represent. See *Dixie Belle Mills, Inc.*, 139 NLRB 629, 632 (1962) (finding "the fact that no labor organization seeks to represent a multiplant unit" supports upholding the single-

store presumption). Here, Workers United has only focused on organizing individual stores, and therefore its extent of organization supports the single-store presumption.

VII. CONCLUSION

For the foregoing reasons, the petitioned-for single store unit is appropriate. The Petitioner respectfully asks that the Region swiftly set the date for a mail-ballot election.

This 17th day of February, 2022.

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CERTIFICATE OF SERVICE

I hereby certify that on February 17, 2022, I submitted the foregoing **WORKERS UNITED'S POST-HEARING BRIEF** to the National Labor Relations Board, Region 22 via the NLRB e-filing system, and served a copy of the same on the following via e-mail:

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**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 22**

STARBUCKS CORPORATION,

Employer

and

WORKERS UNITED,

Petitioner

Case No.: 22-RC-288780

**POST-HEARING BRIEF ON BEHALF OF
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I. INTRODUCTION

Workers United (“Union”) seeks to represent all Baristas, Shift Managers, and Assistant Store Managers (“ASMs”) at a Starbucks Corporation (“Starbucks” or “Company”) owned store located at 800 Hopewell Road, Pennington, New Jersey, 08534 (“Hopewell”). Starbucks contends that the smallest appropriate unit must also include the other 11 stores in Starbucks’ District 761. Starbucks proceeded to a hearing before the Region on the issue of the appropriate unit to protect the rights of all non-supervisory hourly partners working in District 761 to vote on the question of union representation.

The evidence presented by Starbucks during the hearing, when analyzed with well-established National Labor Relations Board (the “Board” or “NLRB”) case law, proves that the single-store presumption has been rebutted because the petitioned-for store does *not* maintain the local autonomy, control, or authority sufficient to sustain the presumptive single-store units. All District 761 stores are highly integrated and follow exacting operational protocols to ensure each of the 12 stores have the same “feel,” is similarly merchandized, uses the same customer flow, sells the same food and beverages, and overall provides the same consistent Starbucks experience customers both expect and deserve. To ensure consistent service, Starbucks employs a dedicated team of partners who are hired with the expectation that they will work in multiple stores throughout the district. All District 761 partners are similarly trained, perform the same roles and duties, and enjoy the exact same terms and conditions of employment. Partners are able to work in any District 761 store on any given day and, without additional store-specific training, seamlessly provide the same great customer service. By design, not happenstance, almost half of the Baristas at the petitioned-for store have worked in multiple District 761 stores in the last year and a half. District 761 partners are one team.

Because District 761 operates as one functionally integrated unit with significant employee interchange, common wages, benefits and employment terms for partners throughout the district, a single-store unit is not conducive to stable labor relations. Moreover, any decision finding a single-store unit appropriate would be improperly controlled by the extent of the Union's organizing in violation of Section 9(c)(5) of the National Labor Relations Act ("Act") since the facts, the law and the practicalities of the labor relations situation in District 761 mandate a single, district-wide unit.

II. BACKGROUND FACTS AND PROCEDURAL HISTORY

Starbucks operates over 9,000 retail locations across the United States to connect communities, one cup of coffee at a time. The Company's North America retail operations are organized into twelve retail regions. (Hopewell Tr. 196,197; M Tr. 25).¹ District 761 is part of Starbucks' Region 7 and Area 81, which covers, among other places, New Jersey. (Hopewell Tr. 196-198). District 761 consists of 12 total stores: eight are cafés and drive-thru stores; four are café only stores. (Hopewell Tr. 44). All stores at issue in District 761 are owned and operated by Starbucks. (Hopewell Tr. 195).

Regional Director Jen Pivarnik ("Pivarnik") oversees the Northern New Jersey Region, and

¹ The Region has taken administrative notice of the transcripts from the R case hearings in 03-RC-282115 (Buffalo I – Elmwood), 03-RC-282139 (Buffalo I – Genesee Street), 03-RC-282127 (Buffalo I – Camp Road), 03-RC-285929 (Buffalo II – Walden Avenue), 03-RC-285986 (Buffalo II – Sheridan Drive), 03-RC-285989 (Buffalo II – Transit Road), 28-RC-286556 (Mesa, Arizona), 01-RC-287639 (Boston – Coolidge Corner), 01-RC-287618 (Boston – Commonwealth Avenue), 19-RC-287954 (Seattle, Washington), and 10-RC-288098 (Knoxville, Tennessee) (Hopewell Tr. 159, 173).

References to the Buffalo I transcripts are (B I Tr. ____). References to the Buffalo II transcripts are (B II Tr. ____). References to the Mesa transcripts are (M Tr. ____). References to the transcript in the Boston hearings are (Bos. Tr. ____).

Exhibits presented in the Buffalo I hearing are referred to as (____ Ex. XX). Exhibits presented in the Buffalo II hearing are referred to as (____ Ex. 1XX). Exhibits presented in the Mesa hearing are referred to as (____ Ex. 2XX). Exhibits presented in this hearing are referred to as (____ Ex. 3XX). Exhibits presented in the Boston hearing are referred to as (____ Ex. 4XX).

therefore has responsibility for Area 81, which includes District 761 and the Hopewell store. (Hopewell Tr. 196). Pivarnik has been the Regional Director for this area roughly five years, and she reports to Regional Vice President, Tracy Gavin Bridgman (“Bridgman”). (Hopewell Tr. 195). Scott Thibedeau (“Thibedeau”) is the current District 761 District Manager. (Hopewell Tr. 19, 20). Misty Knight (“Knight”) is the current Hopewell Store Manager. (Hopewell Tr. 333).

The Union filed a petition to represent Baristas, Shift Managers, and Assistant Store Managers at the Hopewell store on January 11, 2022. The Region conducted a hearing regarding the unit scope on February 2 – 3, 2022. Both Starbucks and the Union called six witnesses and introduced roughly 30 exhibits during the hearing.

For the reasons described herein, Starbucks believes that the Union seeks an inappropriate single-store unit, and that the only appropriate unit is one covering all Baristas working across District 761, defined as follows:

Included: All full-time and regular part-time Baristas and Shift Supervisors employed at the Employer’s stores located in District 761.

Excluded: All supervisory employees including Store Managers, Assistant Store Managers, office clerical employees, professional employees, guards and supervisors as defined by the Act, and all other employees.

III. THE ONLY APPROPRIATE UNIT IS ONE COMPRISED OF ALL STORES IN DISTRICT 761

The totality of the evidence before the Region rebuts the single-store presumption and requires the conclusion that the only appropriate unit is one that consists of all Baristas and Shift Supervisors working in District 761. Under current Board law, a single-store bargaining unit is presumed to be appropriate in the retail chain setting. In order to rebut that presumption, a party must negate the separate identity of the single-facility unit. *See Red Lobster*, 300 NLRB 908, 910 (1990). To determine whether the single-facility presumption has been rebutted, the Board analyzes the following community of interest factors: (1) the extent of central control over daily

operations and labor relations, including the extent of local autonomy; (2) the functional coordination in operations between locations; (3) the similarity of partner skills, functions, training and working conditions; (4) the extent of common wages, benefits and other terms and conditions of employment; (5) the degree of partner interchange; (6) the geographic proximity between locations; and (7) the parties' bargaining history, if any exists. *See Trane, Inc.*, 339 NLRB 866, 867 (2003); *McDonald's, Inc.*, 192 NLRB 878, 880 (1971).

As set forth below, the evidence proves that the single-store presumption has been rebutted in this case because: (1) Starbucks centrally controls the daily operations and labor relations of the District 761 stores such that individual stores and store managers have little or no autonomy; (2) there is extensive functional coordination in operations between District 761 locations; (3) partner skills, functions, training and working conditions are nearly identical across the market and are primarily controlled by centrally promulgated policies and procedures; (4) common wages, benefits and other terms and conditions of employment are the same across District 761; (5) there is partner interchange across the district; (6) District 761 stores are geographically proximate to one another; and (7) although the parties have no formal bargaining history, there is a uniformity of partner interests throughout the district.

a. Starbucks Controls the Daily Operations and Labor Relations of All District 761 Stores at the District Level or Higher.

Single-location units are not appropriate in this case because control over daily operations and labor relations primarily lies at the district level or above and applies to all stores in District 761. *See Budget Rent A Car Systems*, 337 NLRB 884, 885 (2002); *Super X Drugs of Ill., Inc.*, 233 NLRB 1114, 1114-15 (1977); *Kirlin's Inc. of Cent. Illinois*, 227 NLRB 1220, 1221 (1977).

i. Operational Decisions Are Controlled at the District Level and Above.

Here, the evidence demonstrates that store planning, design, layout, maintenance, supplies, merchandising and promotions are all controlled by policies and procedures applicable to all stores in District 761. Individual Store Managers have no material control over these operational issues. Facts supportive of a multi-location unit include evidence that decisions such as store layout, products, pricing, merchandising, purchasing, daily operations, and scheduling, are made on a multi-store basis rather than a single-store basis. *See Super X Drugs*, 233 NLRB at 1114 (finding the single store presumption rebutted where “[t]he [e]mployer’s operations are highly centralized and all of the stores are similarly laid out, displaying and selling the same merchandise at the same price [,] and the district manager determines the mode of advertising and prices.”). As Ms. Pivarnik testified, District Managers are expected to visit the stores in their District on a regular basis “to ensure that business operations are running to standard,” which includes disciplinary oversight, facilitation of transfer of items and equipment, and all other tasks to ensure the store is operating smoothly. (Hopewell Tr. 203).

a. Store Planning, Design, Layout and Maintenance Are Centrally Controlled at the District Level and Above.

All decisions about whether and where to build new Starbucks stores, and whether to close, remodel, or relocate current stores, are made at the district level and above. (Hopewell Tr. 21-42, 196; B I Tr. 53-56, 63, 185; M Tr. 86-87; 132; Bos. Tr. 345). Decisions to open or close stores within the District are made through collaboration between Starbucks’ corporate operations team, the store development team, the real estate team, and the market planning team with input from Bridgman, Pivarnik, and Thibedeau. (Hopewell Tr. 41-42; M Tr. 123, 125-128, 132; Bos. Tr. 345). Individual Store Managers are not involved in the decision about whether their store will remain open or be closed. (B I Tr. 181-183; M Tr. 132; Bos. Tr. 345).

Starbucks has centrally developed a prototype store design that represents the Starbucks' brand and includes specific equipment and other layouts to drive store efficiencies. (M Tr. 125). Starbucks' centrally determined design and layout requirements are only modified to meet landlord requirements. (M Tr. 125). Store Managers do not have any input on store location, design, construction, size, layout, décor, equipment, or whether or when a store will be remodeled. (M Tr. 87-88, 95-97, 132, 161).

b. Supplies, Merchandising, and Promotions Are Centrally Controlled at the District Level or Above.

Starbucks creates and implements detailed operational protocols to ensure customers receive the same Starbucks experience regardless of the store they visit on any given day. Customer flow, product selection, and services are highly orchestrated within the District 761 stores. Simply put, as consumers we all know that we will receive the same great beverages, food, and experience no matter which Starbucks we enter – that is a product of extensive, centralized design and control over store operations.

Across the district, stores utilize the same products and supplies. Decisions as to what products will be sold and what supplies will be utilized in District 761 stores are made by Starbucks' centralized supply chain and product teams. (B I Tr. 70; M Tr. 58, 84-85, 108). Menus are set outside of the stores and are consistent across all district stores. (B I Tr. 82-83; M Tr. 56-59). Store Managers have no role in this process; they do not determine what products will be sold at their assigned stores, and they cannot vary from Starbucks' pre-determined product offerings. (B I Tr. 70-71, 82-83; M Tr. 56-59). The limitations on local stores' ability to modify ordering are intended to ensure sufficient inventory of supplies exists for other stores to meet customer demand throughout District 761, not just at an individual store, and thus Starbucks reduces waste.

Store promotions also are determined on a centralized basis, and Store Managers cannot decide to opt out of promotions or hold their own promotions. (Hopewell Tr. 56-57; M Tr. 156). Approximately six times per year, Starbucks headquarters issues a planning period guide nationally, and the District 761 District Manager and Store Managers meet to review it. (Hopewell Tr. 53-54; B I Tr. 351; M Tr. 56-59; Bos. Tr. 352). The planning guide includes in-depth discussions of the promotional items to be showcased during the planning period, special food or drink items to be offered at all stores, as well as instructions on how to implement the new promotional items. (Hopewell Tr. 53-54. 56; B I Tr. 351, Bos. Tr. 355; Er. Ex. 332). Just as in the Buffalo and Mesa Markets, all District 761 stores receive the same planning guide at the same time, and all District 761 partners are required to adhere to the planning guide's directives on how to prepare seasonal food and beverage items and display such items. (Hopewell Tr. 56; B I Tr. 351-352; M Tr. 56-59; Bos. Tr. 352, 355). Store signage is centrally produced by Starbucks' creative studio and directed at the corporate level. (Hopewell Tr. 56; M Tr. 156-157; Bos. Tr. 354). Individual stores and Store Managers execute the prescribed plans, and the District Manager is directly involved in such launches. (Hopewell Tr. 57; M Tr. 406-407, Bos. Tr. 352). Store Managers do not have the authority or autonomy to deviate from the planning guide procedures, they may not decline to participate in "promo" periods, and they have no control over the products and merchandise offered by the store during these periods. (Hopewell Tr. 57; B I Tr. 351; M Tr. 56-59).

Starbucks' extensive centralized operational control drills down to the details of which coffees will be brewed in its District 761 stores each week, how food will be displayed, and how food and beverage items are presented. (Hopewell Tr. 47; B I Tr. 86; M Tr. 56-59, 158-159; Bos. Tr. 358-59). In fact, Starbucks headquarters regularly distributes a "Siren's Eye" to each store.

(Er 9; Hopewell Tr. 56; B I Tr. 295-296; M Tr. 57, 158-159; Bos. Tr. 358-59; Er. Exs. 21, 207). Like the directives in the planning period guide, the Siren's Eye tool identifies and dictates exactly how and where each store displays its merchandise. (Hopewell Tr. 56-57; Bos. Tr. 358; B I Tr. 295-296; M Tr. 57-59, 158). Each Siren's Eye has an effective date determined by Starbucks headquarters, and the document includes visual layouts providing direction on where bottles of water are placed, how many cake pops are displayed in the food case and where they are placed, and the temperature at which merchandise should be maintained. (Hopewell Tr. 57; B I Tr. 101-102, 356, 358-359, 295-296; M Tr. 56-59, 158-159; Er. Exs. 21, 207). Store Managers do not participate in the creation of the Siren's Eye and are not permitted to vary from the operational guidelines set forth in the Siren's Eye. (Hopewell Tr. 56-57; B I Tr. 80, 83; M Tr. 56-59, 159; Bos. Tr. 359). The role of the store is to execute on the carefully designed plans, so customers have a consistent experience in whichever store they visit.

Relatedly, individual Store Managers have little or no discretion or input on product or supply pricing, procurement, invoicing, or purchasing. (B I Tr. 70-71, 350-351; M Tr. 56-59, 153; Bos. Tr. 330-32). Pricing is handled by the "pricing team" at the market, regional or national level, not at the store level. (B I Tr. 350-351; M Tr. 59; Bos. Tr. 330). All procurement, invoicing, and payment of food and beverage items are processed by the Starbucks supply chain team on a district-wide basis. (Hopewell Tr. 260 – 261; B I Tr. 70-71; M Tr. 84-85). Product and supply orders for all stores in a district are placed on a district-wide basis. (Hopewell Tr. 261; B I Tr. 70-71; M Tr. 84-85). In fact, the District 761 stores purchase the same products from the same vendors, the products are shipped from the same warehouse utilizing the same delivery trucks, and the invoicing for products and supplies is handled by the same centralized automated resource. (Hopewell Tr. 260 – 261; Bos. Tr. 330-332; M Tr. 84-85, 153-155; B I Tr. 65-66, 70-73, 75). Store Managers

cannot order products beyond those specified by Starbucks, cannot exceed limits on certain products, cannot change distribution centers for their stores, do not plan delivery routes, and do not determine product pricing. (M Tr. 153-156).

Starbucks also uses engineering tools to automatically replenish all packaged food, packaged coffee, merchandise, and gift cards. (Hopewell Tr. 260; M Tr. 84-85, 151-153; B I Tr. 346). New inventory arrives without any orders or requests from individual stores, and Store Managers *cannot* adjust their orders for certain products.² (M Tr. 84-85; B I Tr. 346-347; Bos. Tr. 331). The Company also has an auto-shipment process for select food and beverage items, and it has plans to make beverage and paper product orders automated as well. (M Tr. 84-85, 153; B I Tr. 346-347; Bos. Tr. 330-31). Thus, new and seasonal items are automatically shipped to each store without any interaction from the Store Manager. (Hopewell Tr. 260; M Tr. 84-85; B I Tr. 346-347).

For those products not covered by automated shipment, all stores use the same inventory management system (“IMS”) that automatically suggests order quantities based on order history. (M Tr. 84-85, 150; B I Tr. 74, 345-346; Bos. Tr. 101). This “par builder” determines each store’s appropriate order and inventory needs based on sales history, forecast, and trend data. (B I Tr. 345-346; M Tr. 84-85, 108, 150; Bos. Tr. 102). There are also “suggested order quantities,” or SOQs for each store, which are designed to minimize the need for human input in inventory orders. (M Tr. 151-153; B I Tr. 346). If the inventory is accurate, and the counts are right, then the IMS works with very little input from store-level management. (M Tr. 152; B I Tr. 346). Store Managers and ASMs have the ability to make changes in the IMS, although any changes can be made only within parameters centrally established by Starbucks. (M Tr. 153; B I Tr. 123-124; Bos. Tr. 100-102).

² Stores can, however, adjust their pars, which is one of the factors that the automated ordering system takes into consideration. (Bos. Tr. 101-102, 331-21).

Starbucks seeks to limit the input local stores can make into the system because inventory quantities are determined based on previous trends, product mix, sales forecasts and other factors. (M Tr. 152; B I Tr. 346-347). .

ii. Labor Relations Decisions Are Controlled at the District Level and Above, Not at the Individual Store Level.

Labor relations decisions are also centrally controlled at the District 761 level or above through the regular and substantial interaction of the District Manager with each of the stores, and Starbucks' nationally deployed policies and technology tools. Specifically, the District 761 District Manager frequently communicates with the stores and often is in the stores daily. (Hopewell Tr. 20-21). He has weekly meetings with all of the District 761 Store Managers, he holds monthly hiring and staffing meetings with all of the Store Managers in his district, and he holds planning meetings with all of the Store Managers in his district. (Hopewell Tr. 39, 55). As the evidence discussed below demonstrates, virtually every major decision with respect to labor relations is handled at the District Manager level and above.

a. Staffing Needs Are Determined on a District-Wide Basis Utilizing the Partner Planning and Partner Hours Tools.

The staffing needs of all stores within District 761 are centrally determined at the District Manager level and above. (Hopewell Tr. 59-60; M Tr. 4-35, 43-44, 94-95, 149; Bos. Tr. 346-47). Thibedeau reviews the staffing and labor hours for each store in the district weekly through information generated by the Availability Assessment/Partner Hours tool. (Hopewell Tr. 59-60). The Partner Hours tool and the Partner Planning tool work together to forecast customer demand across the district on a per store basis, determine the number of partners to be scheduled in a particular store in the district, and determine a forward-looking forecast of how many partners may need to be hired. (Hopewell Tr. 60, 204-206; B I Tr. 218; M Tr. 94-95, 149-150, 245-246). Only the District Manager has access to the information generated by the Partner Planning tool; Store

Managers do not have access to this information unless granted by the District Manager. (M Tr. 94).

When new stores open in District 761, Thibedeau determines who will work in that store to ensure the right mix and right number of partners. (Hopewell Tr. 68, 69). In the event a partner leaves Starbucks and wants to be rehired, the Hopewell Store Manager generally seeks input and approval of the District Manager must approve the rehire. (M Tr. 68; Bos. Tr. 368). The same process is implemented for transfers. (Hopewell Tr. 70, 71; Er. 16).

As to scheduling, Knight and Thibedeau have a weekly meeting to discuss labor allotted, partner availability, preferred availability and the number of hours partners are looking for when creating schedules. (Hopewell Tr. 344). They specifically review whether additional labor is required to ensure appropriate staffing or determine whether hour modification may be necessary. (Hopewell Tr. 345). Where specific needs must be met, Thibedeau reaches out District-wide to find support of partners to ensure appropriate staffing. (Hopewell Tr. 347).

ii. Applications, Hiring, and Promotion Procedures Are Handled on a District-Wide Basis.

Starbucks obtains and processes employment applications on a centralized basis. Applicants for Barista and Shift Supervisor positions are received through Starbucks' career website. (Hopewell Tr. 58; B I Tr. 224-234, 245-257; M Tr. 64, 248; Bos. Tr. 369). All applicants complete the same job application on Starbucks' website and answer the same prescreen questions. (B I Tr. 224-234, 256-257; M Tr. 63-65, 248-249; Bos. Tr. 285, 369; Er. Exs. 8-9). Once the applicant passes the prescreening process, their information is entered, centrally stored, and remains active in Starbucks' hiring platform called Taleo. (Hopewell Tr. 66; B I Tr. 233-234, 236-238; M Tr. 63-64). Applicants can apply for a particular store as well as the surrounding stores at the same time. (Bos. Tr. 369).

If an offer is extended, Starbucks personnel outside of the district process a background check. A candidate who passes the pre-screening assessment and is offered employment (contingent upon background check), may be denied employment if the background check does not clear. (Hopewell Tr. 254, 350; B I Tr. 241).

Despite being authorized to unilaterally hire, Knight consults with Thibedeau. (Hopewell Tr. 79). Further, Ms. Knight always consults with Thibedeau before making a promotion decision. (Hopewell Tr. 336-337). Knight also testified that she frequently interviews and hires for barista and initial startup positions in *other* stores throughout the District. (Hopewell Tr. 340-341). Knight routinely interviews candidates that have applied to the Hopewell store with the clarification that they may ultimately be hired into another location as well. She has also participated in a District-wide job fair (Hopewell Tr. 343). Similarly, Thibedeau testified that he helps and will sometimes interview for the entire District. (Hopewell Tr. 93).

a. Promotions Are Controlled on a District-Wide Basis.

Starbucks implemented a Career Progression process in early 2021 whereby partners interested in promotion must apply for available positions through Taleo, and the progression process is centralized at the district level or above. (Hopewell Tr. 65; B II Tr. 57-58). Recruiters and interviewers then conduct a prescreening process and interviews, and they make the decision to promote or not promote someone into a new position.

Store Managers make recommendations for promotion to ASM. Knight trains ASMs for all stores in the District. (Hopewell Tr. 333). Thibedeau reviews the needs of the District when promoting and placing ASMs. (Hopewell Tr. 55). Knight consults Thibedeau on each and every promotion, and Thibedeau testified that in general, store managers consult him before promoting through the system. (Hopewell Tr. 62).

b. Hours of Work Are Determined on a District-Wide Basis, and Partners Cover Shifts in Multiple Stores.

Store hours for each store in District 761 are set by the District Manager in partnership with the Regional Director. (Hopewell Tr. 63, 267; Bos. Tr. 344; M Tr. 49, 146). Absent an emergency, Store Managers do not have the ability to set or change hours; all such decisions must be approved by the District Manager. (Hopewell Tr. 63-64; Bos. Tr. 344; M Tr. 49-50, 146, 165).

When partners are hired in the District, they enter their availability to work on a form entitled the Partner Availability Form. (Er. 15; Hopewell Tr. 59-60; Bos. Tr. 371; M Tr. 34-35; Er. Exs. 4, 201). Notably, the Partner Availability Form seeks partners' availability for hours in which they may be scheduled to work but does *not* seek partners' limitations as to the stores in which they are willing to work. Rather, the expectation is that every partner is available to work in their home store and any other stores in the district. (Er. 15; Bos. Tr. 371-73; M Tr. 34-36). The Partner Availability Form clearly sets forth the expectation that partners will work anywhere when needed: "[y]ou could also be asked to work at another location to meet the needs of the business or to attain your requested hours." (Er. 15). Once the partner completes the Partner Availability Form, the information is input into the centralized Partner Hours database. (B I Tr. 214-215; M Tr. 34; Bos. Tr. 34). The Partner Planning tool marries its forecasting information with the partners' availability data from Partner Hours, and the scheduling system automatically shares this information with the Store Manager creating the schedules. (Bos. Tr. 105-106; M Tr. 34-35; B I Tr. 218-219, 260).

Schedules are posted weekly, three-weeks in advance. (Hopewell Tr. 358; Bos. Tr. 374; M Tr. 38). Overtime must be approved by the District Manager; it cannot be approved by Store Managers. (Hopewell Tr. 346; M Tr. 36; Bos. Tr. 582, 642, 657). If all shifts in a store cannot be covered due to call-offs or other reasons, the Store Manager and the District Manager look for

partners to cover the shifts, both from within the home store involved and from other stores in the District. (Bos. Tr. 374-75; M Tr. 36, 39; Er. Ex. 334).

Relatedly, if a partner wants more hours than are being provided through the scheduling at their home store, the partner can look for hours in other stores by checking the weekly back of house posting showing needs within District 761. (Hopewell Tr. 65-66; Bos. Tr. 377; M Tr. 36-38). They can also ask their Store Manager, who would then let other Store Managers in District 761 know of their desire. (Bos. Tr. 379). Partners routinely work hours in stores other than their home stores as evidence by the interchange data discussed below. (Hopewell Tr. 136; Bos. Tr. 379).

In addition, Starbucks' scheduling tools specifically schedule Store Managers for "non-coverage" hours in which they are not performing customer-facing duties. (M Tr. 62, 145, 163; Bos. Tr. 95-96). Store Managers do not decide what their non-coverage hours will be, or how many hours they will spend in non-coverage duties. (M Tr. 146).

c. Partner Work Assignments Are Centrally Recommended by the Play Builder Tool.

Starbucks has developed an engineering tool called the "Play Builder" to assist stores with work assignments. (Er. Ex. 6; Hopewell Tr. 32, 89-90; M Tr. 89-90, 92; B I Tr. 354; Bos. Tr. 333; Er. Ex. 16). The Play Builder, which is used in all stores in the U.S., utilizes data to make projections of the daily store workflow, the product mix, the number of partners scheduled to work, and makes recommendations for where partners should be placed in the line layout and what tasks they should be asked to complete. (Hopewell Tr. 32, 35, 89-90; Bos. Tr. 333-35; M Tr. 89-90, 92, 327-328; B I Tr. 91, 354; Er. Ex. 204, 327). As Thibedeau testified, stores are expected to use the Play Builder tool, and this expectation is applicable to all stores within District 761. (Hopewell Tr. 32, 35; Bos. Tr. 335, 337). Indeed, Starbucks has disciplined Store Managers who failed to

deploy the Play Builder in their stores. (Bos Tr. 364; Er. Ex 333).

d. Starbucks Manages Discipline Using Centralized Tools and Forms and Store Managers Have No Discretion to Alter Them.

Further evidence of centralized control is the implementation of partner discipline. Starbucks utilizes yet another technology tool, Virtual Coach, to ensure that discipline is consistently administered across its stores. (Hopewell Tr. 27-28; Er. 13, 14; Bos. Tr. 386). Virtual Coach was designed to address the high frequency of partners working in multiple stores. Starbucks ensures that each partner is managed in the same way and subject to the same disciplinary policies and procedures regardless of the stores in which such partner may work. (Hopewell Tr. 28; B I Tr. 280; M Tr. 254). All the corrective action forms utilized in District 761 and throughout the country are centrally created at the corporate level. (Hopewell Tr. 28; Er. 13, 14; Bos. Tr. 389; M Tr. 80).

e. Partners' Workplace Concerns Are Centrally Handled at the District Level and Above.

Starbucks also utilizes the Partner Contact Center, which acts as a call center to triage incoming partner complaints and questions. All District 761 partners are provided with contact information for the PCC via the Partner Guide. (Er. 2, 3; Hopewell Tr. 33; Bos. Tr. 323; M Tr. 91; B I Tr. 282). All partner calls to the PCC are answered by human resources professionals who are trained to calibrate with one another to drive consistent outcomes. Those answering the calls adhere to myriad of scripts to assess the situation. If the incoming call is about harassment or ethics, the partner call is forwarded to the business and ethics compliance team. (Hopewell Tr. 33; B I Tr. 389-390; M Tr. 256-257). If the incoming call is more human resources related, then it is transferred to the partner relations team. There is a specific Partner Relations contact for District 761. (Hopewell Tr. 26).

In sum, all decisions regarding staffing, hiring, scheduling, promotions and disciplinary action are guided by Starbucks' centrally promulgated policies, handled in the first instance by Starbucks' centrally deployed technology tools, and are handled with significant involvement from and approval by the District 761 District Manager.

The Union's witnesses acknowledged that a "Make the Right Call" poster is posted in the back of the store which includes resources to contact if a partner feels they are experiencing harassment, bullying, discrimination, or other issues. (Hopewell Tr. 33-34, 316. ; Er. 3). This posting provides that partners can contact not only their Store Manager, but also their District Manager, Regional Director, and a partner relations contact. The poster includes phone numbers and names for each of these individuals.

B. The District 761 Stores Are Functionally Coordinated at the District Level or Above.

As the foregoing discussion makes clear, all the District 761 stores are functionally coordinated both in terms of operations and in terms of labor relations. Indeed, the purpose of the district structure is to have a group of stores operate closely, share product and partners, and function as a business unit. (Bos. Tr. 321). To this end, District 761 has its own profit and loss statement. (Hopewell Tr. 48). Additionally, Starbucks collectively purchases, receives, and delivers supplies and products through the one supply chain system to the stores with limited store-level discretion. (Hopewell Tr. 260; M Tr. 84-85; Bos. Tr. 330-332). When a store runs low on supplies, partners contact and travel to other stores to pick up the needed supplies. (Hopewell Tr. 260-261; M Tr. 150; B I Tr. 78-80). All stores in District 761 and throughout the U.S. utilize an automated ordering system for certain products like food and merchandise, and for items not automatically ordered, all stores utilize the same inventory management system for ordering supplies. (Hopewell Tr. 260; Bos. Tr. 101; M Tr. 84-85).

Starbucks' uniform policies and procedures and deployment of technology tools to standardize hiring, scheduling, assigning work and discipline across District 761 is also strong evidence of functional coordination at the district and national level. Staffing and partner planning are handled on a district-wide basis. (Hopewell Tr. 266; Bos. Tr. 346). Individual store managers do not have authority to deviate from the centrally promulgated procedures. (Hopewell Tr. 49, 57; M Tr. 423-24, 426, 427, 433, 454; Bos. Tr. 323, 359). The uniform deployment and utilization of technology tools is also designed to limit local store autonomy and Store Manager discretion over the areas in which these tools operate, and to ensure operational and labor relations uniformity across all stores in the district. (M Tr. 85, 86, 92, 94).

Perhaps most importantly, however, the functional coordination among the District 761 stores is demonstrated by the way Starbucks manages its partners on a district-wide basis. In instances where stores are dual-managed, the District Manager decides which Store Manager covers more than one store. (Bos. Tr. 351-52; M Tr. 55). The District Manager visits stores in the district weekly, reviews staffing and hours reports weekly, conducts weekly meetings with all of the District 761 Store Managers, holds monthly promotional planning meetings with all of the Store Managers in his district, and is involved in discipline and discharge decisions. (Hopewell Tr. 20, 45, 50; Bos. Tr. 346-47, 352; M. Tr. 54-55, 103; Er. Ex. 331).

Another strong example of the functional integration of the District 761 stores is the partner interchange discussed below. Starbucks' operations are built on the premise that partners will work across district stores as business needs dictate. (Bos. Tr. 353-54, 371; M Tr. 30). For that reason, partners are hired with the expectation that they will work at multiple stores during their employment. (Bos. Tr. 371; M Tr. 30; Er. Ex. 4). As explained in greater detail below, partners with "home" stores in District 761 can and do regularly work in other stores in District beyond

their “home” store. (Hopewell Tr. 94, 103; Bos. Tr. 371-73; M Tr. 30-31, 34, 37). In fact, more than half of the partners in the petitioned-for stores between April 2019 and January 2022 worked as “borrowed” partners away from their home stores. (Hopewell Tr. 127). Ms. Turner specifically testified that the data “shows 31.7 percent or about a third of [partners] work[ed] only at the [Hopewell] store during [the sample] period. The other two-thirds work[ed] at two or more stores during the period, with a little over a third working in three or more stores.” (Id.)

Beyond these factors, functional coordination in District 761 is also demonstrated in the District 761 workplace chat. Pivarnik communicates with Store Managers throughout the district through the group chat communication platform to stay connected and check in on issues. (Hopewell Tr. 211-212). These connections demonstrate the high-level of functional coordination among stores in District 761.

Pivarnik also testified that where one store has product to be stored but a lack of space, they will reach out to another store in the District and store the product there. (Hopewell Tr. 261). This type of product/space sharing is takes place regularly between stores. (Id). Where a store has excess product of which other stores are in need, that store will transfer the product across the stores in the District. (Id).

In short, Starbucks centrally controls nearly every aspect of day-to-day store operations at the District 761 level or above. This purposeful and detailed centralized decision-making ensures a consistent Starbucks experience for customers regardless of the District 761 store they patronize. This extensive centralized control also enables partners to work seamlessly in any District 761 store without additional training to deliver the same customer experience, while continuing to enjoy the same terms and conditions of employment regardless of the store in which they are working. The functional coordination of Starbucks operations also is strong evidence rebutting

the single-store presumption and supports a multi-location unit consisting of all hourly partners working in District 761 as the only appropriate unit.

C. Partner Skills, Functions, and Working Conditions Are the Same Throughout the District.

There is no dispute that all the partners working in District 761 have the same basic job functions and skills,³ and enjoy the same wages, benefits, and other working conditions regardless of the store in which they work. Again, this is by design because it allows a District 761 partner to work seamlessly in any store without the need for retraining or making adjustments to wages and benefits.⁴

a. All District 761 Partners Have the Same Job Functions and Skills.

Consistent with Starbucks' business model of delivering the same customer and partner experience regardless of individual store, partner skill sets and their working conditions are identical across District 761. Partners throughout the district perform the same functions and deliver the same customer service at every store district-wide. The training, functions, and services are all derived from Starbucks' intentional and meticulous business plan to control the precise mechanism through which stores precisely operate to ensure customer experience consistency.

Partners throughout District 761 are required to follow the same operating and policy manuals developed at Starbucks' headquarters in Seattle, including the Siren's Eye, the Partner Guide, the Operations Manual, and the Operation Excellence Guide, which specify what food items will be included in the weekly menu, the menu prices, instructions on how to display and

³ The Buffalo ARD found that there was a meaningful functional difference between stores with drive-thrus and stores without drive-thrus. In actuality, the only functional difference between these types of stores is that partners working in stores with drive-thrus must utilize a headset, which is a *de minimis* difference at most. (B II Tr. 59).

⁴ Tellingly, the most common difference Union witnesses mentioned with respect to working in another store as a borrowed partner is not knowing where things are because stores have different layouts depending on their size. (Bos. Tr. 511, 584-585).

prepare food and drink items, the roles of the positions in the District, and any training necessary to complete these tasks. (Hopewell Tr. 56-57, Er. 12; 49; M Tr. 90-92; B I Tr. 350-352; Bos. Tr. 322-23, 359).

Partners in District 761 all operate the same equipment and are assigned to the same types of in-store work locations to perform specific roles and routines as guided by the Play Builder tool. (Hopewell Tr. 32; Er. Ex. 6; Bos. Tr. 333-37; M Tr. 89-90, 92; B I Tr. 93, 95-97). Once assigned to in-store locations by the “play caller” (who most often is a shift supervisor), the partners perform specific roles and routines per detailed guidelines. (Er. Ex. 6). For each role there is a corresponding routine that a partner must follow. (*Id.*; Bos. Tr. 338-39). In addition, partners must also follow the same steps and instructions when performing all store-related operations, *e.g.*, opening the store, “clocking in” their time, displaying merchandise, creating and serving drinks and food, stocking merchandise, placing orders in the point of sale (“POS”) system, closing out a transaction, and store closing duties. (M Tr. 89-90, 92; B I Tr. 89, 94-95, 96-97, 249-250, 356, 358-59; Er. Exs. 13, 17, 21).

b. All District 761 Partners Undergo the Same Orientation and Training, Which Is Centrally Determined.

All partners receive the same new hire orientation. (Hopewell Tr. 38, 279; Er. 12; Bos. Tr. 307-08; M Tr. 77-78, 376; B I Tr. 247-248; Pt. Ex. 8). The “First Sip” orientation is exacting to the level of detail that the same exact coffee is brewed for the new hire’s first coffee tasting.

All partners also receive the same training regarding food and store safety, which is centrally promulgated by Starbucks’ training team. (Er. 12; B I Tr. 87-88). Starbucks’ Operations, Products and Learning Development Teams oversee partner training needs, and create and implement scripts for new promotions, including for promotions to the position of Shift

Supervisor. (M Tr. 70-71, 75-80; B I Tr. 84-85, 369; Er. Exs. 14-15).

The fact that Baristas across District 761 possess the same skills, perform the same functions, receive the same orientation and training, and enjoy the same working conditions strongly rebuts the single-store presumption, and shows that a multi-location unit consisting of all Baristas and Shift Supervisors in District 761 is the only appropriate unit.

c. Shift Supervisors in District 761 Receive the Same Career Development Opportunities and Training

Shift supervisors at all stores in District 761 are given the opportunity to elect to participate in the “Shift Forward” program where they receive training on leadership and Starbucks operations. (Hopewell Tr. 305-306). The program, designed to facilitate consistent growth for Shift Supervisors District-wide, involves group discussion and training videos on how to appropriately observe a store floor. (Hopewell Tr. 314). The District also conducts Shift Supervisor roundtables via Zoom to facilitate growth and development consistently for all Shift Supervisors in the District. (Hopewell Tr. 305-306).

D. All District 761 Partners Share the Same Centrally Determined Wages, Benefits, and Working Conditions.

Partners who work in District 761 stores earn the same wage rate regardless of the specific store in which they may be working on any given day. Wages and benefits for all partners in District 761 are set by Starbucks’ Corporate compensation team in Seattle. (Hopewell Tr. 213-215; Bos. Tr. 326-27). Store Managers have no discretion over and no ability to change the wages or benefits in any individual District 761 store. (Hopewell Tr. 213-216; Bos. Tr. 327). Annual wage increases are centrally determined. (Bos. Tr. 327; M Tr. 83; B I Tr. 259, 284). Again, there is no differentiation based upon individual stores, which is consistent with the Starbucks model - that partners are available and seamlessly work across all District 761 stores while enjoying the

same exact terms and conditions of employment.

All District 761 partners also receive the same exact vacation and paid time-off benefits. (Er. 4; Bos. Tr. 324-326M Tr. 83; B I Tr. 286-90, 294). In addition, all District 761 partners receive access to the same exact additional benefits, including, but not limited to:

- Medical, dental, and vision coverage (after 20 hours)
- Short- & Long-Term Disability Coverage
- Life Insurance
- A yearly grant of stock
- Access to the Company's Stock Investment Plan
- Company's 401(k) Plan
- Partner & Family Sick Time
- Paid Parental Leave
- Lyra Mental Health
- Headspace
- Weekly free coffee mark outs
- Free coffee and food while working
- Care@Work
- Financial Assistance Program (CUP) Fund
- Food discounts
- Time and a half paid for holidays
- Family expansion reimbursement
- DACA filing fees
- Free bachelor's degree through Arizona State University
- Online courses on sustainability
- Starbucks Coffee Academy
- Coffeegear
- Commuter benefits
- Starbucks Rewards Partner Benefits
- Partner Discount Programs
- Giving Match
- Partner Connection & Fitness Reimbursement
- Elite Athlete Program
- Partner Recognition

(Er. 4; Bos. Tr. 324-326; M Tr. 83; B I Tr. 286-290, 294).

Beyond receiving the same wages and benefits, all District 761 partners enjoy the same working conditions regardless of the store in which they work on a given day. For example, all partners within District 761 wear the same uniforms, access the same timekeeping system, use the same POS system, perform the same job duties and provide the same customer experience regardless of store. (Hopewell Tr. 31, Bos. Tr. 328, 338; M Tr. 90; B I Tr. 292-293, 575). Working conditions do not vary by store.

E. The NLRB Has Held the Single-Store Presumption Rebutted Under Circumstances Similar to Those in This Case.

The quantum of evidence regarding central control of operations and labor relations, and common terms and conditions of employment in this case is similar to or greater than those cases in which the Board held that the employer had overcome the single-facility presumption. For instance, in *Super X Drugs*, the Board found that a multi-location unit was appropriate where the centralized control of operations and labor relations left the authority of store managers “severely circumscribed.” 233 NLRB at 1114-15. As in the instant matter, in *Super X*, all of the Company’s stores were similarly laid out and displayed and sold the same merchandise, and the district manager determined advertising, prices, operating hours, the number of employees in each position, and the hours to be worked by employees. The district manager was also required to approve leaves and pay raises, and while a store manager interviewed applicants and played a role in the hiring and firing process, the district manager was also a decision-maker in both. The Board found that the employer’s operations were “highly centralized” and that the only appropriate unit included all four of the employer’s stores in the Chicago area or all five of its stores in Cook County.

Similarly, in *Kirlin’s*, the Board held that a single-location unit was inappropriate because “of the integrated operation of the six stores, the centralized management of labor matters, commonality of supervision, interchange of employees, identical employee functions and terms and conditions of employment, the limited personal authority of each store manager, and the proximity of the two Carbondale stores within the same shopping mall.” 227 NLRB at 1220-21. In its decision, the Board noted that purchasing, accounting and distribution of merchandise were handled centrally for all stores, all stores were similarly laid out and displayed and sold goods at the same prices, the operations manual was centrally drafted and established uniform guidelines

for all stores, and employees performed the same functions, received the same wages and participated in common benefits across stores. While the individual store managers in *Kirlin's* were involved in the hiring, firing, and discipline process, and could recommend the same, which far exceeds the involvement of Starbucks' Store Managers in District 761, the Board found that the Kirlin's district manager "share[d] final authority" with the store manager. *Id.* at 1221. Like the facts in this case, the store managers in Kirlin's had, at best, "limited authority" in daily labor relations decisions, but the Board found that the centralized control over operations showed a "lack of autonomy at the store-level" that rendered a multi-location unit appropriate.

Likewise, in *Big Y Foods, Inc.*, 238 NLRB 860 (1978), the Board found a multi-location unit appropriate and held that the three petitioned-for stores lacked sufficient local autonomy. In its decision, the Board noted that "[a]lthough it is apparent that the individual store managers directly supervise employees, it cannot properly be concluded the managers significantly control or implement terms and conditions of employment of the liquor markets' employees." *Id.* at 861. While the Board recognized that local managers assigned duties and prepared schedules, this authority was circumscribed by the centralized control over employee hours and uniform policies. *See also Walakamilo Corp.*, 192 NLRB 878, 878 & n.4 (1971) (finding "individual store managers exercise little discretion" because the director of operations set wages, granted promotions, and had final authority with regards to grievance adjustments, even though individual store managers may hire employees and discharge employees); *Twenty-First Century Rest. of Nostrand Ave. Corp.*, 192 NLRB 881, 882 (1971) (finding individual restaurants subject to "close centralized control" notwithstanding that individual store managers were authorized to hire new employees at the state's minimum wage rate, could discharge new employees within a 90-day probationary period, and issue discipline); *White Castle System, Inc.*, 264 NLRB 267, 268 (1982) (noting

individual store manager authority was “highly circumscribed” despite store supervisors being permitted to interview and hire employees subject to a district manager’s approval); *Nakash, Inc.*, 271 NLRB 1408, 1409 (1984) (finding individual store manager’s autonomy “severely circumscribed” where, although store manager hired individuals, the store manager had to adhere to “established guidelines” in hiring, and otherwise confer daily with a member of central management about hiring and firing decisions).

F. There is a High Degree of Employee Interchange Across All Stores in District 761.

In addition to the significant evidence of centrally controlled operations and labor relations, the evidence also demonstrates significant partner interchange among stores in District 761. Specifically, Starbucks provided raw data, with specific partner information, dates, stores, and time punch details, for all partners in District 761, and presented expert testimony from Dr. Abby Turner (“Dr. Turner”), who holds a Ph.D. in economics and public policy, to analyze and explain the data contained in Employer Exhibits 20-A, B, and C. This expert analysis strongly supports the conclusion that Starbucks partners have substantial interchange among the District 761 stores. This evidence rebuts the single-store presumption.

1. Expert Testimony is Properly Admissible and Should be Given Significant Weight.

The Hearing Officer properly took notice of the ruling in the Mesa case, RC-286556, and the Boston case, 01-RC-287618, certifying Dr. Turner as an expert. (Hopewell Tr. 110). Board law recognizes the value that expert testimony may have in its hearings and applies Federal Rule of Evidence 702. *See* § 16-702, ALJ Bench Book (Jan. 2021) (noting that the Board applies Federal Rule of Evidence 702, which allows expert testimony if it will “help the trier of fact to understand the evidence or to determine a fact in issue.”). In fact, the Board has reversed and remanded decisions issued in representation matters when relevant expert testimony was excluded.

See E. I. DuPont de Nemours & Co., 162 NLRB 413, 413 n.2 (1999) (reversal of hearing officer’s decision to exclude expert testimony comparing the employer’s manufacturing process to the processes used in other industries during unit composition hearing); *see also N.Y. Univ.*, 356 NLRB 18, 19 (2010) (reversing dismissal of representation petition to allow for development of a full evidentiary record including, among other things, expert testimony concerning whether the petitioned-for unit included employees under the Act).

Here, Starbucks presented a large volume of raw data regarding partner interchange and statistical analysis regarding the data that is clearly relevant. (Er. Exs. 20-A, B, and C). The Board has previously recognized the value of statistical analysis to contextualize interchange data, concluding in *New Britain Transp. Co.*, 330 NLRB 397, 398 (1999), that interchange data presented without any statistical analysis was “of little evidentiary value.” Performing such a statistical analysis is not something that the Board or Regional Directors are required to attempt, nor are they authorized to hire economic experts like Dr. Turner of their own volition, should they be unable to do so. *See* 29 U.S.C. § 154(a) (“Nothing in this subchapter shall be construed to authorize the Board to appoint individuals . . . for economic analysis”). It follows, therefore, that having an expert like Dr. Turner conduct a statistical data analysis and testify regarding what that data means in context, is not only relevant but inherently useful to assist the Regional Director to assess the matter before them, as the evidence presented regarding employee interchange bears directly upon the ultimate issues in this case.⁵

⁵ All of the raw data Dr. Turner analyzed (Er. Exs. 20-A, B, and C, 21-A and B, and 22-A and B), the calculations she used to analyze that data, and the outputs from those calculations (Er. Exs. 20-A, B, and C, 21-A and B, and 22-A and B) are in the record. The outputs from Dr. Turner’s calculations are reflected visually in the figures found in Er. Ex. 22-A and B and reproduced herein.

2. The Analysis of Starbucks' Interchange Data Demonstrates Real and Substantial Partner Interchange Throughout District 761.

Dr. Turner's analysis, report and testimony demonstrates that she analyzed Starbucks' interchange data in District 761 as a whole. As the NLRB's case law makes clear, and as presented below, the rates of interchange identified by Starbucks' data and Dr. Turner's analysis strongly support rebuttal of the single-store presumption in this case.

While in previous cases Dr. Turner was not able to control for the impact of COVID-19 on the partner interchange data, she was able to control or remove the COVID-19 period from the Hopewell store data. Dr. Turner had interchange data available prior to the realignment that allowed her to compare interchange pre- and post-COVID. (Hopewell Tr. 132).⁶ Interchange was even more frequent pre-COVID.

a. The Data Shows Frequent Interchange Across District 761.

An analysis of the data available for non-exempt Starbucks partners, limited to Shift Supervisors and Baristas, working in District 761 which covers the approximately two- and one-half-year period between April 28, 2019 and January 2, 2022 shows that approximately 38.6% of partners in the Hopewell store worked in two or more stores. (Hopewell Tr. 1269; Er. Ex. 22-A). Roughly 20% of Hopewell Baristas worked in three or more stores during the relevant period. (*Id.*) Figures 1 and 2 below illustrate the distribution of non-Store Manager partners from the petitioned for store by the number of the 12 District 761 stores in which they worked.⁷

⁶ Dr. Turner testified that "pre-COVID" meant the period of time prior to March 2020, isolated to April 9, 2019 through February 29, 2020. (Hopewell Tr. 132).

⁷ Even looking at a second data set (set forth in Er. Exs. 21a and 21b), which included two additional (14 total) stores that had historically been included in the district, the evidence shows that there is still a significant amount of interchange. These two additional stores include a store that was in the district but closed and a store that was realigned with another district. (Hopewell Tr. 42, 115-118).

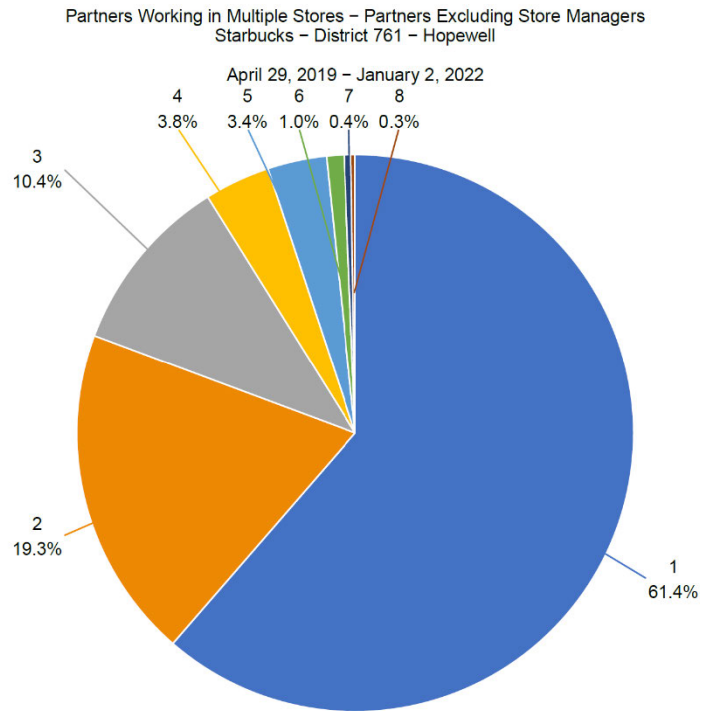


Figure 1

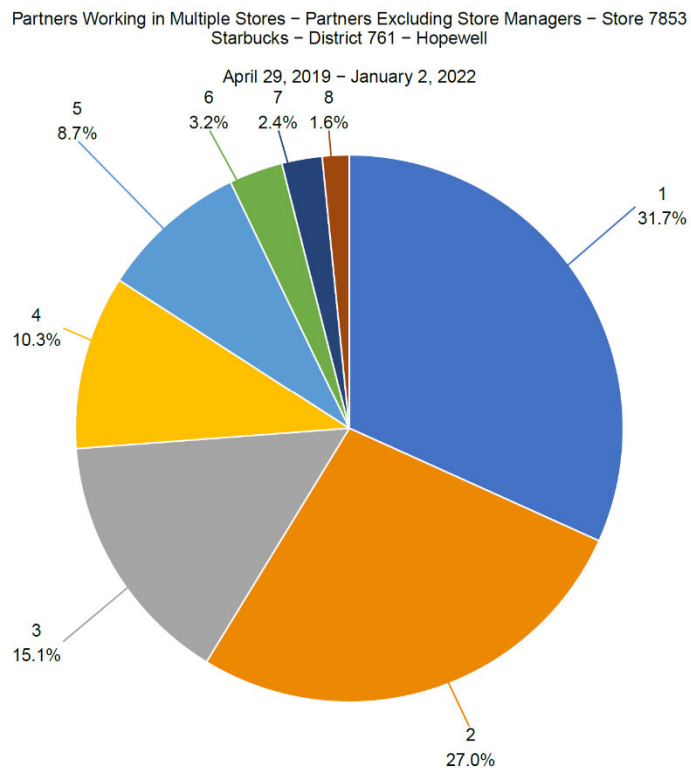


Figure 2

Unsurprisingly, both Union’s witnesses testified that they have worked at stores other than their home store in District 761. (Hopewell Tr. 291 (Mughal), 325-326 (Kenney). Both witnesses also acknowledged knowing of other Hopewell partners working at stores other than the Hopewell store. (Hopewell Tr. 326-329). This level of interchange is sufficient to rebut the single-store presumption. *See Budget Rent A Car*, 337 NLRB 884, 884-85 (2002) (19.0% interchange rate supported rebutting single-store presumption); *Twenty-First Century Rest. of Nostrand Ave. Corp.*, 192 NLRB 881, 882 (1971) (14.3% interchange rate supported rebuttal of single-store presumption); *McDonald’s, Inc.*, 192 NLRB at 878-79 (multi-location unit appropriate where 58 out of 243 employees were temporarily transferred and the interchange rate was less than 1%).

Figure 3 below is a map indicating the locations of all Starbucks stores in District 761. The lines connecting the stores indicate the flow of borrowed partners across stores, with arrows indicating the direction of the borrowing. This map illustrates the extent to which borrowing is widespread across the district. There are no stores that are isolated or excluded from borrowing or lending partners; even more geographically separated District 761 stores borrow from and lend partners to other stores within the district. Nor are any smaller clusters of stores isolated from the rest of the district, sharing partners only amongst themselves. A clear pattern of regular interchange between all stores in the district emerges from the network illustrated in the map.

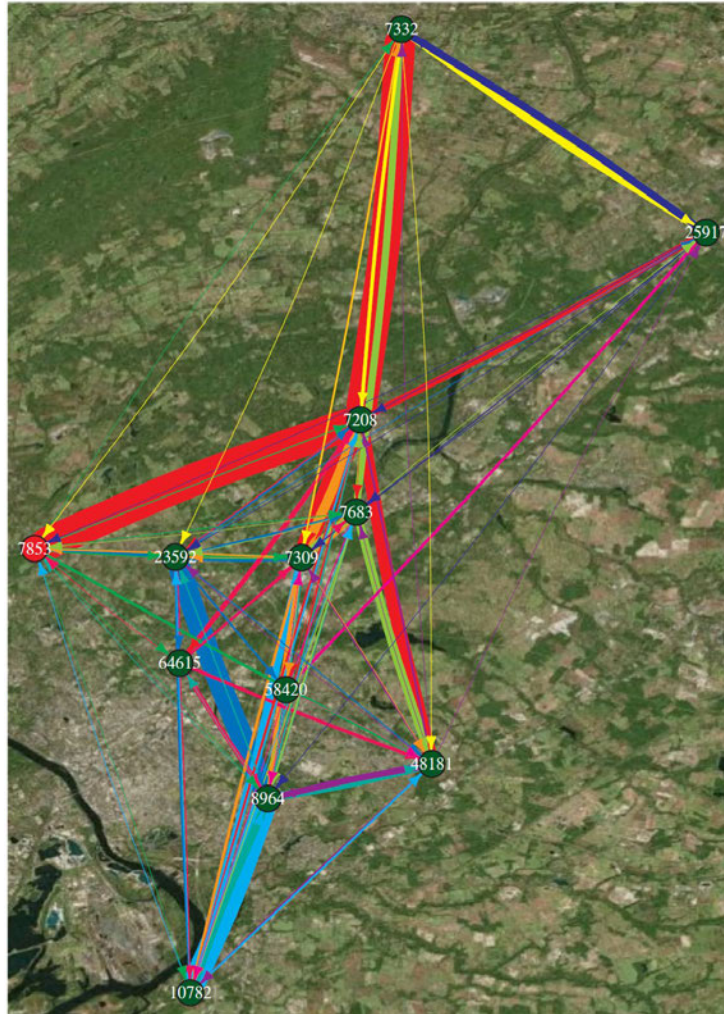


Figure 3

b. The Union’s Labelling of the Interchange as “Voluntary” Does Not Diminish the Interchange Evidence.

Faced with this data proving the level of partner interchange (which partners know exists), the Union sought to adduce testimony to label the partner interchange as “voluntary” in that partners decide when and where they want to work. Regardless of this testimony, the record evidence demonstrates that Starbucks created a staffing model that is *specifically designed* to ensure that staffing needs are met by partners who regularly work in multiple stores. All partners are informed of this expectation upon hire, and the Starbucks staffing model is designed to account for market-wide staffing through volunteers. In any event, there is no basis in Board law for the

Union's position that a partner's willingness to work across multiple stores as a clear expectation upon hire somehow undermines the extent of employee interchange under the law. The focus of the interchange analysis is whether a significant portion of the workforce is involved in interchange, which is patently the case herein.⁸

The substantial partner interchange in District 761 strongly rebuts the single store presumption and shows that a multi-location unit consisting of the entire district is the only appropriate unit.

G. All District 761 Stores Are Located in Close Proximity to One Another, and Closer than the Locations in Many Multi-Location Units Found Appropriate by the Board.

As is seen in Employer Exhibit 17, the stores in District 761 are in relatively close geographic proximity to one another. (Er. Ex. 17). The geographic proximity of the stores in District 761 is reinforced by the interchange data mapped by Dr. Turner and reproduced above.

This close proximity between stores is intentional. Starbucks does not select store sites based on the site's proximity to another Starbucks store, but rather based on its efforts to gain market share over its competitors in the district. (Hopewell Tr. 199-202). Further, Starbucks has intentionally designed its business operations, including its district structure to facilitate the movement of partners across stores in close geographic proximity to one another. This fact is evident in the district-based hiring process, the district-based scheduling process, and the significant evidence of partner interchange between stores.

Moreover, these stores are significantly closer together than the stores in *Gray Drug Stores*,

⁸ While Starbucks believes that the data overwhelmingly supports a multi-location finding, interchange is not a necessary condition for overcoming the single-location presumption. *See V.I.M. Jeans*, 271 NLRB 1408, 1409 (1984) ("Viewed against the background of the highly centralized administration of all nine stores, the daily contact with [Company President] and the other supervisors and the restricted authority of the store manager, the fact that there is not substantial employee interchange pales in its importance to the determination of the issue.").

Inc., 197 NLRB 924-926 (1972), which were deemed sufficiently close together for a multi-location unit despite being located along a 300 mile stretch on the Florida coast. *See also Dayton Transp. Corp.*, 270 NLRB 1114, 1115-16 (1984) (terminals a total of 175 miles apart were not distant and, in any event, the nature of the employer's operations, the similarity of skills, and the frequency of interchange among drivers at the terminals and the resultant commonality of supervision demonstrated a shared community of interests rendering a single-location unit inappropriate).

The close geographic proximity of the stores in District 761 strongly rebuts the single store presumption and supports a multi-location unit consisting of the entire district as the only appropriate unit.

H. The Parties Have No Bargaining History But Partners Across District 761 Have Shared Interests.

While there is no bargaining history, the evidence in this case shows that Starbucks' hourly partners share a strong community of interests throughout District 761. Bargaining on a single location basis is inconsistent with the Company's business model premised on partners seamlessly working across District 761 stores, including the petitioned-for Hopewell store. On the other hand, bargaining on District-wide basis is consistent with the Company's highly integrated operations, manifested through the high level of partner interchange. Furthermore, bargaining at a single location does not make practical sense because there is a lack of local autonomy at the store level.

V. THE UNION'S EFFORT TO HOLD ELECTIONS IN MULTIPLE SINGLE-STORE BARGAINING UNITS VIOLATES SECTION 9(C)(5).

The Union's effort to start with one store as a single-location unit and then expand to additional stores as it gains support evidences the fact that its petitions and proposed unit scope are impermissibly controlled by the extent of its ability to organize the Central New Jersey area. Ordering separate elections at only the Hopewell store would generate a violation of Section

9(c)(5), which provides: “[i]n determining whether a unit is appropriate... the extent in which the employees have organized shall not be controlling.” 29 U.S.C. § 159(c)(5). The U.S. Supreme Court has cautioned that enforcing courts “should not overlook or ignore an evasion of the § 9(c)(5) command.” *NLRB v. Metro. Life Ins. Co.*, 3105 U.S. 438, 442 (1965). The community of interest facts at issue, precedent with respect to determining the appropriate bargaining unit, and whether the unit determination is adequately explained, are all analyzed in determining whether a Section 9(c)(5) violation exists. *See, e.g., Lundy Packing Co.*, 68 F.3d 1577, 1580-83 (4th Cir. 1995); *May Dep’t Stores Co. v. NLRB*, 454 F.2d 148, 150-51 (9th Cir. 1972).

In this case, the evidence and the law demonstrate that the single-store presumption has been rebutted, and that the smallest appropriate unit is one consisting of all hourly Baristas working in District 761. Just as in *Szabo Food Markets*, 126 NLRB 349, 350 (1960), where the Board found that an arbitrary grouping of stores was controlled by the extent of organization, the single store petitioned for by the Union is part of the larger District 761; it is operated based on policies and procedures applicable to all stores in the district; the partners working in the Hopewell store have the same training, wages, benefits, uniforms, and employment policies; and, they interchange on a frequent basis between stores in the district. There is simply no basis on which to carve out one single store from the whole of District 761. On these facts, and based on the Board precedent discussed above, the Union’s selection of the Hopewell store to pursue a separate election is arbitrary and controlled by the extent of its organizing in violation of Section 9(c)(5) of the Act. *See also Malco Theatres, Inc.*, 222 NLRB 81, 82 (1976) (petitioned-for unit of five theaters out of eight in the Memphis area was inappropriate where employees at all theaters had virtually identical wages and benefits, common supervision, common operating policies, employee interchange between theaters, and were all located in a metropolitan area); *Kansas City Coors*, 271 NLRB

1388, 1389-90 (1984) (petition seeking only some, not all of employer's locations was inappropriate where locations were only 25-30 miles apart at most, all labor relations policies and methods of operation were employer-wide and controlled by employer policy, employees at the stores performed the same work in the same job classifications and under the same employment terms, and there was "some" interchange of employees and equipment among the locations).

Further, the Union's attempted piecemeal representation of District 761 is in no one's interest. *DPI Secuprint, Inc.*, 362 NLRB No. 172 (2015) (Member Johnson, dissenting) ("The trend toward smaller units - or units comprised of employees not significantly distinguishable from their coworkers except by the extent of organizing - cannot foster labor peace."). A proliferation of bargaining units in District 761 will waste significant agency resources in a repetitive process with the same Union goal. A single district-wide vote in a multi-location unit will avoid the outcome of up to twelve separate single-store petitions being filed, processed, and potentially litigated for years to come.

By any measure, the Union's petitions improperly seek units based on the present extent of organizing alone. The Union's petition is inappropriate, and an election should be ordered for all of District 761, the only appropriate unit, should the Union choose to proceed to such an election. Starbucks' District 761 partners deserve the right to vote in a multi-location unit election together.

VI. CONCLUSION

For all of the reasons set forth at length above, the Union's request for a single-store election in District 761 is not appropriate. Starbucks respectfully requests that the Region direct a multi-location election for the Baristas working across all 12 District 761 stores and dismiss the Union's petition.

Respectfully submitted,

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CERTIFICATION OF SERVICE

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